

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Big Mack Leasing Co. Inc.	: SMP No. 32950104 (Iselin No. 18 Mine)
568 Silvis Hollow Road	: Young Township, Indiana County
Kittanning, PA 16201	:
	: Alternative Financial Assurance Mechanism

POST-MINING TREATMENT TRUST CONSENT ORDER AND AGREEMENT

This Post-Mining Treatment Trust Consent Order and Agreement ("COA") is entered into this 8th day of July, 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Big Mack Leasing Co., Inc. ("Big Mack").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, 52 P.S. §§ 1396.1 *et seq.* ("Surface Mining Act"); the Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, P.L. 31, 52 P.S. §§ 1406.1 *et seq.* ("Mine Subsidence Act"); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, 52 P.S. §§ 30.51 *et seq.* ("Coal Refuse Disposal Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, 35 P.S. §§ 691.1 *et seq.* (Clean Streams Law); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, 71 P.S. § 510-17 (Administrative Code); and the regulations promulgated thereunder.

B. Pursuant to Section 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of

a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust having been established, as required by this Consent Order and Agreement, through the accompanying Post-Mining Discharge Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by Section 4(d.2) of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c, Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52. P.S. §§ 30.53a and 30.59, and Section 9 of the Subsidence Act, 52 P.S. § 1406.9, the Department has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. Big Mack is a Pennsylvania corporation with an office and business address of 568 Silvis Hollow Road, Kittanning, PA 16201, whose business includes surface mining of coal in Pennsylvania.

D. Terry L. Schall is the sole officer and President of Big Mack and is responsible for the day-to-day operation of the company.

E. Big Mack was authorized to conduct surface coal mining in the Commonwealth of Pennsylvania pursuant to Surface Mining Operators License No. 4375, which expired on January 21, 2007.

Iselin No. 18 Mine (SMP No. 32950104)

F. Big Mack is the permittee and operator of the Iselin No. 18 Mine (“Iselin Mine”) pursuant to Surface Mining Permit (“SMP”) No. 32950104, located in Young Township, Indiana County, which is associated with post-mining discharge liability. The Department issued the

original surface mining permit for the Iselin Mine to Big Mack on June 29, 1995. The SMP was most recently renewed on March 16, 2017 for reclamation activities only.

G. All mining and reclamation have been completed on the Iselin Mine site. The only activity which remains is the treatment of an acid mine drainage (“AMD”) seep zone currently identified as TP1D (“TP1D”) and a Subchapter F AMD discharge identified as Monitoring Point MD11 (“MD11”). Both discharges are hydrologically connected to and located on the permit and are characterized by depressed pH, acidity greater than alkalinity, and elevated metal concentrations that exceed the limitations of 25 Pa Code § 87.102.

H. A summary of the reclamation bonds currently posted for the Iselin Mine are as follows. The Department declared the bonds forfeit in August 2007 but did not collect the bonds.

BOND TYPE	FINANCIAL GUARANTOR	BOND INSTRUMENT NO.	BOND STATUS	BOND AMOUNT
Collateral Bond/ Letter of Credit	Farmers National Bank	LOC# 521	Forfeited - not collected	\$110,600.00
Collateral Bond/ Letter of Credit	Farmers National Bank- Kittanning	LOC# 526	Forfeited - not collected	\$ 9,800.00
Collateral Bond/ Letter of Credit	Farmers National Bank	LOC# 540	Forfeited - not collected	\$ 4,200.00
Collateral Bond/ Letter of Credit	Farmers National Bank	LOC# 579	Forfeited - not collected	\$ 400.00

Post-Mining Discharges

I. A hydrologic investigation conducted by the Department in 1998 in response to Big Mack’s Stage I Bond Release Request identified seep zone TP1D (originally referred to as “TP1”). The Department concluded that Big Mack was responsible for treating the TP1D seeps which had been degraded by mining operations on the Iselin Mine site. On April 16, 1998, Big Mack completed construction of a passive treatment system to treat TP1D, including a collection system

and an anoxic drain. From October 1998 until October 2005, Big Mack continued to provide needed maintenance to the passive treatment system and amendments to the abatement plan for the site. However, since 2005 upgrades have been needed to the treatment system.

J. In February of 2006, the Department notified Big Mack that the subchapter F monitoring data for MD11 showed an excursion for iron and informed Big Mack that it was responsible for degrading MD11 and required to commence treatment of the discharge.

December 2009 Consent Order and Agreement

K. On December 22, 2009, Big Mack entered into a Consent Order and Agreement (“2009 COA”) with the Department. Under the terms of the 2009 COA, Big Mack agreed to design and construct a treatment facility for MD11 and make necessary upgrades to the TP1D treatment system. The 2009 COA is attached as Exhibit A.

L. Under the 2009 COA, Big Mack also agreed to establish a long-term financial assurance in the form of a treatment trust to provide for perpetual operation and maintenance of the treatment systems for TP1D and MD11 (“Treatment Systems”). The parties agreed to an initial estimated trust fund target value of \$250,000. Big Mack established the Big Mack Treatment Trust by executing a Post-Mining Treatment Trust Agreement with Somerset Trust Company dated December 22, 2009 which conforms with the Department’s model trust agreement. A copy of the 2009 Big Mack Treatment Trust Agreement is attached as Exhibit B.

M. Under Paragraph 5 of the 2009 COA, and as required by Article I, Section 1.3 of the Big Mack Treatment Trust Agreement, Big Mack agreed to fund the Big Mack Treatment Trust with an initial deposit of \$9,000, with additional deposits of cash, a portion of the proceeds from the sale of incidental coal it encountered while installing the treatment system for MD11, and the assignment of the collateral bonds identified in Paragraph H, above. The Treatment Trust is

currently valued at \$448,369.92, excluding the value of the collateral bonds, as of March 27, 2019.

N. The parties also agreed to negotiate a post-mining treatment trust consent order and agreement using actual cost figures from the first year of operation of the Treatment Systems following construction to recalculate the Trust fund target value and address long term financial assurances for the treatment of the discharges associated with the Iselin Mine.

O. On December 3, 2010, Big Mack and the Department executed a First Amendment to the 2009 COA to provide additional time to complete construction on both Treatment Systems and gather more accurate information regarding the long-term treatment costs.

NPDES Effluent limits for the Iselin Mine Discharges

P. A topographic map depicting the location of MD11 and TP1D is attached as Exhibit C. The latitude and longitude coordinates for the discharges are as follows: **MD11** lat.40°35'53" - long.079°21'37"; **TP1D** lat.40°36'04" - long.079°21'36".

Q. The raw water quality of MD11 and TP1D, as compiled by the Department, is set forth in Exhibit D.

R. Discharges from the Iselin Mine Treatment Systems are authorized under NPDES Permit No. PA0213055 which was renewed by the Department on March 16, 2017 and expires on June 29, 2020. The discharge from the treatment system for TP1D is authorized under Outfall 004 (TP-2). The discharge from the treatment system for the Subchapter F discharge MD11 is authorized under Outfall MD11. The required effluent limits applicable for both discharges are set forth in the NPDES Permit, which is renewed every five years (pursuant to the authority in 25 Pa. Code Chapter 92a). The effluent limits may change at the time of renewal or as required by the Department, and the effluent limits in the NPDES permit govern. The current effluent limits are set forth in the table below.

Effluent Limits for 004 and MD11

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	1.60 mg/l	2.05 mg/l	2.05 mg/l
Manganese (total)	5.23 mg/l	6.70 mg/l	6.70 mg/l
Suspended solids	35.0 mg/l	70.0 mg/l	90.0 mg/l
Aluminum (Total)	4.00 mg/l	5.57 mg/l	5.57 mg/l
pH ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹The parameter is applicable at all times.

S. Big Mack agrees it has the legal responsibility pursuant to, *inter alia*, the Surface Mining Act and The Clean Streams Law to properly treat or abate the discharges from the Iselin Mine identified in Paragraph G, above.

Treatment Systems

T. Discharge MD11 is diverted through four inlet wetland ponds and then treated in a vertical flow pond. The outflow is diverted through two settling basins and two wetlands and polished in a final manganese bed. The treated effluent discharges into the headwaters of an Unnamed Tributary to Whiskey Run (“UNT”) via Outfall MD11.

U. Discharge TP1D is diverted through two settling basins and two vertical flow ponds. The outflow is then diverted through a final polishing manganese bed. The treated effluent discharges into headwaters of the UNT via Outfall 004. The MD11 and TP1D Treatment Systems are depicted on Exhibit E.

V. The Treatment Systems are situated on land owned by the William J. McIntire Estate. Big Mack has obtained from the William J. McIntire Estate a properly executed Consent to Right of Entry form which grants the Department, Big Mack and the Trustee access to the Treatment Systems. A copy of the executed and recorded Consent to Right of Entry form is

attached as Exhibit F.

Big Mack Treatment Trust

W. In order to calculate the amount necessary to fully fund the Trust, the Department and Big Mack have agreed to use actual operation and maintenance costs from past operation of the Treatment Systems and AMDTreat software tool cost estimates where insufficient operation and maintenance cost data exist. A summary of current annual operation and maintenance costs for the Treatment Systems is as follows:

Table of Current Annual Operation and Maintenance Costs

CATEGORY	SAMPLING	LABOR	MAINTENANCE	SLUDGE REMOVAL	POND CERTIFICATION	OTHER
Rate		(\$35/hr.)				
Annual Cost	\$2,000	\$1,046	\$252	\$880	\$775.03	\$2,253

Based on actual operation and maintenance costs from past operations and AMDTreat cost estimates, the current annual cost of operating and maintaining the Treatment Systems is \$7,206.03. The AMDTreat cost estimates are attached as Exhibit G.

X. In order to calculate the amount necessary to fully fund the Trust, the Department and Big Mack have agreed to use recapitalization and demolition cost data generated by the AMDTreat software tool. According to AMDTreat, the present value of recapitalization costs for the Treatment Systems is \$258,975.00. The AMDTreat Recapitalization Cost Schedule for the Treatment Systems is attached as Exhibit H.

Y. Big Mack established a Post-Mining Treatment Trust with Somerset Trust Company in December 2009 as an alternative financial assurance mechanism, (and a financially-backed enforceable contract), in order to provide for the long-term treatment of post-mining discharges MD11 and TPD1 with an initial estimated target value of \$250,000 and to secure the

release of reclamation bonds upon completion of all other reclamation and bond release requirements and full funding of the Trust.

Z. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the Treatment Systems in order to maintain the proper amount of financial assurance.

AA. The parties have agreed to use the formulas set forth below to calculate the present value of the Big Mack Treatment Trust. The parties agree that the present value of the fully-funded Big Mack Treatment Trust for the discharges covered by this Consent Order and Agreement is \$433,886.51. This sum constitutes the current present value of the estimated future operation and maintenance costs for the Treatment Systems, the current present value of the estimated future recapitalization costs for the Treatment Systems, and the current present value of the estimated future liability insurance costs for the Treatment Systems, as shown on the AMDTreat Treatment Bond/Trust Calculator attached as Exhibit I. The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4, below to recalculate and adjust the amount of the Big Mack Treatment Trust as described in Paragraphs 8 and 10, below.

BB. As of March 27, 2019, the current value of the corpus of the Big Mack Treatment Trust is \$448,369.92. The Department has determined that the Big Mack Treatment Trust is fully funded for the discharges covered by this Consent Order and Agreement, including the current present value of the future operation and maintenance costs of the Treatment Systems, the current amount needed to finance anticipated and periodic capital expenditures for the Treatment Systems, and the current present value of the estimated future liability insurance costs for the Treatment Systems.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Big Mack as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; Section 9 of the Subsidence Act, 52 P.S. § 1409.9, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of Big Mack to comply with any term or condition of this Consent Order and Agreement shall subject Big Mack to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. Big Mack agrees that the findings in Paragraphs A through BB are true and correct and, in any matter or proceeding involving Big Mack and the Department, Big Mack shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Definitions

a. Accounting. The accounting required by Paragraph 4 of this Consent Order and Agreement.

b. Actual Treatment Cost. The average of three consecutive years of the

costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. Thirty (30) days after the last day of Big Mack's fiscal year or thirty (30) days after the last day of any fiscal year which Big Mack may adopt in the future.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the Treatment Systems.

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this Consent Order and Agreement.

g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the Treatment Systems. The equation is:

$$\begin{array}{lll} \text{PV} & = & (A/[E-I]) + A \\ \text{where: PV} & = & \text{Present Value of the O\&M Costs} \\ A & = & \text{Current Actual Treatment Cost} \\ E & = & \text{Expected annual earnings/Interest Rate (assumed to be} \\ & & \text{8.43\% or .0834)} \\ I & = & \text{Inflation Rate (assumed to be 3.1\% or .031)} \end{array}$$

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. 116% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the Treatment Systems.

k. Primary Trust Valuation. The cash, cash equivalents, investments at market

value of investments and the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. Big Mack shall keep accurate financial records of all the costs and expenses of annual treatment for each year. The various cost factors fall into several general categories, including, but not limited to: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual item shall be tracked and reported for each general category.

b. Big Mack shall keep separate records for each of the Treatment Systems covered by this Consent Order and Agreement.

c. Big Mack shall provide an annual accounting of the costs and expenses of annual treatment to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1st and continuing through December 31st of each year, or other fiscal year as Big Mack may adopt for its corporate finances in the future and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of the treasurer or other corporate officer responsible for the financial affairs of Big Mack and by the President of Big Mack attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. Big Mack's obligation to keep records and provide the Accounting shall continue for the period during which Big Mack is operating the Treatment Systems.

e. In the event of a dispute about the costs and expenses of treatment incurred by Big Mack, Big Mack shall bear the burden of proving the accuracy and completeness of the

Accounting and the records upon which the Accounting is based. A Special Report prepared under Generally Accepted Accounting Principles as to the treatment costs incurred by Big Mack, prepared by an independent licensed public or certified public accountant, shall satisfy Big Mack's burden of proof as to any of these matters.

5. Treatment Trust

a. Big Mack has established an irrevocable trust known as the **Big Mack Treatment Trust** by executing a Post-Mining Discharge Treatment Trust Agreement with Somerset Trust Company dated December 22, 2009. The Big Mack Treatment Trust shall secure Big Mack's obligation to treat Discharges MD11 and TP1D, including its legal obligation to operate and maintain the Treatment Systems in perpetuity or until the Department determines that water treatment is no longer necessary. The Big Mack Treatment Trust shall also secure Big Mack's obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the Treatment Systems and to treat the mine drainage in perpetuity in the event Big Mack becomes unable or unwilling to meet these obligations. The Big Mack Treatment Trust shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. The Agreement establishing the Big Mack Treatment Trust is attached as Exhibit B.

b. Big Mack shall establish within the Big Mack Treatment Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

c. Upon 30 days prior notice to the Department, Big Mack may post an appropriate bond or bonds with the Department, in the amount determined by the Department in accordance with applicable bonding requirements, in order to guarantee Big Mack's obligation to

treat or abate Discharges MD11 and TP1D. Upon posting sufficient bonds to guarantee Big Mack's obligation, the Department shall direct the Trustee to distribute the trust funds to the Settlor in accordance with Articles 4 and 12 of the Post-Mining Discharge Treatment Trust Agreement attached as Exhibit B.

6. Collateral Bond Release

a. Since the Department has determined that the Big Mack Treatment Trust is fully funded, excluding the value of the collateral bonds, and the mine drainage treatment facilities on the Iselin Mine site are adequately treating the discharges, Big Mack may apply for the release of the bonds previously assigned to the Big Mack Treatment Trust and identified in Paragraph H, above, under the Department's normal bond release procedures.

7. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to Big Mack. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Points 1, 2 and 3 on Exhibit J.

c. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution Payment shall be made, and no additional contribution shall be required. This provision is depicted graphically as Point 4 on Exhibit J.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then

Big Mack shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less except as provided in Paragraph 13.a. This amount is depicted graphically as Points 5 & 6 on Exhibit J.

8. Adjustments to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost

a. All calculations under this paragraph shall be based on values as determined on the Annual Anniversary Date and before any Distribution Payment.

b. If the Actual Treatment Cost for any year is greater than or equal to 110% percent or less than or equal to 90% percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% percent of the new Primary Basis Valuation. Exhibit K is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is greater than the Primary Trust Valuation, no distribution payment shall be made under this paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8., above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to Big Mack. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined

by the following formulas:

$$DP = TR (1 - (\text{new ATC} / \text{prior ATC}))$$

Or

$$DP = TR - \text{new TV}$$

Where: DP = Distribution Payment
TR = Primary Trust Valuation
TV = Primary Target Valuation
ATC = Actual Treatment Cost

10. Capital Improvement Account

a. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 8.43%, the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as Exhibit H. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 12. Such recalculation shall be deemed an amendment to Exhibit H and this Consent Order and Agreement and shall be used in making all future

calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

a. If the Primary Trust Valuation after any Distribution Payment under Paragraph 7, above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on Exhibit H. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to Big Mack any time a planned capital replacement is made as indicated on Exhibit H. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit H, or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 13 below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

13. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust

Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit H, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy Big Mack's obligation to make a contribution payment under Paragraph 7.d. This amount is depicted graphically at Point 5 on Exhibit J. However, the amount of surplus funds transferred to the Primary Trust Account may exceed Big Mack's obligation under Paragraph 7.d. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit J.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Big Mack to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit H.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Big Mack to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by Big Mack to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. Real and Personal Property

a. Currently the passive Treatment Systems at the Iselin Mine site require no personal property or equipment that could be removed from the site. If in the future, water

treatment at this site requires the use of personal property or equipment (that could be removed from the site), then within 30 days of a request from the Department, Big Mack shall create an inventory of all the equipment, facilities, and other personal property used for the treatment of mine discharges associated with the Iselin Mine and submit it to the Department for review and approval. Within 30 days of receipt of written approval of the inventory by the Department, Big Mack shall transfer and convey to the Trustee, without reservation, all Personal Property including, but not limited to, the equipment and other property listed in the inventory in order to ensure continued treatment of the discharges in the event Big Mack enters bankruptcy, ceases to exist, or is unable or unwilling to continue treatment. Said transfer and conveyance shall be substantially in the same form as the Bill of Sale and License Agreement attached hereto as Exhibit L.

b. The provisions of Paragraph 14.a. notwithstanding, for so long as Big Mack is continuing treatment, Big Mack shall be responsible for maintaining and replacing or upgrading, as appropriate, any Personal Property used for the treatment of the mine discharges described in Paragraphs I and J, above. Big Mack's replacement or upgrade of any of the Personal Property previously conveyed as set forth in Paragraph 14.a. above, to the Trustee shall only be done with the express written consent of the Trustee and the Department. All parts, additional equipment, replacements, and upgrades to the Personal Property shall immediately and automatically become the property of Somerset Trust as Trustee of the Big Mack Treatment Trust.

c. Big Mack has submitted to the Department a Consent to Right of Entry required by the Department and the Trustee to gain legal access to the real property containing the equipment and facilities for the treatment of Discharges MD11 and TP1D. This Consent to Right of Entry is more fully described in Paragraph R, above. If any portion of a property subject to a Right of Entry is sold, Big Mack shall obtain a properly executed Consent to Right of Entry form

from the new owner and submit it to the Department and the Trustee within 90 days of the sale.

15. Public Liability Insurance

a. Big Mack shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the Treatment Systems and the real and personal property which is identified in the Post-Mining Discharge Treatment Trust Agreement as part of the Trust Principal. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a above, Big Mack shall ensure that the public liability insurance policy is at all times consistent with the requirements of 25 Pa. Code § 86.168(a) - (f). Pursuant to the requirement set forth at 25 Pa. Code § 86.168(a) that a permittee submit proof which certifies that a public liability insurance policy is in force meeting the requirements of Chapter 86, Big Mack shall submit such proof to the Department at the Annual Meeting described in Paragraph 16, below.

c. In addition to the requirements of Paragraph 15.a, the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty (30) days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of insurance filed annually with the Department which certifies Big Mack has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements

a. The parties will meet on or before the thirtieth day following delivery to the

Department of the Accounting of each year: (i) to review and discuss the Accounting for the then completed fiscal year; (ii) to review the effectiveness of the Treatment Systems and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the Big Mack Treatment Trust; (iv) to calculate, recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and distribution payments from or additional payments into the Big Mack Treatment Trust; and, (v) to address any other issues that may concern this Consent Order and Agreement or its implementation.

b. The Operator shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code §§ 86.62(b) and (c) (relating to identification of interests).

17. Big Mack's Continuing Obligation

Neither Big Mack's agreement to fund the Big Mack Treatment Trust, nor the full or partial funding of the Big Mack Treatment Trust, nor the exhaustion of the Big Mack Treatment Trust shall in any way limit Big Mack's obligation to operate the Treatment Systems and to treat the discharges covered by this Consent Order and Agreement in a manner which meets the effluent limitations described in Paragraph N, above. Furthermore, exhaustion of the Big Mack Treatment Trust shall not excuse Big Mack from Big Mack's obligation to adequately treat or to abate the discharges.

18. Stipulated Civil Penalties

a. In the event Big Mack fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Big Mack shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931-4119
Telephone: 814-472-1900

c. Any payment under this paragraph shall neither waive Big Mack's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Big Mack's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Big Mack's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Additional Remedies

a. In the event Big Mack fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. In the event Big Mack defaults on the obligations of this Consent Order and Agreement, Big Mack will be subject to a permit block on the Department's compliance tracking system and the federal Applicant Violator System and the Department will, in addition to any other remedy or penalty prescribed herein, list Big Mack as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. The remedies provided by this Consent Order and Agreement are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the

Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

20. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. Big Mack reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of Big Mack

Big Mack shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Big Mack also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

22. Transfer of Sites

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Big Mack Sites or any part thereof.

b. If Big Mack intends to transfer any legal or equitable interest in the Big Mack Sites which are affected by this Consent Order and Agreement, Big Mack shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Director, District Mining Operations, Department of Environmental Protection, 286 Industrial Park Road, Cambria, PA 15931 and the District Mining Manager identified in Paragraph 23, below of such intent.

c. The Department in its sole discretion may agree to modify or terminate Big Mack's duties and obligations under this Consent Order and Agreement upon transfer of the Big Mack Mine Sites. Big Mack waives any right that it may have to challenge the Department's decision in this regard.

23. Correspondence with Department

All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

District Mining Manager
Department of Environmental Protection
Cambria District Mining Office
286 Industrial Park Road
Ebensburg, PA 15931-4119
Telephone: 814-472-1900

24. Correspondence with Big Mack

a. All correspondence with Big Mack concerning this Consent Order and Agreement shall be addressed to:

Terry Schall, President
Big Mack Leasing Co., Inc
568 Silvis Hollow Road
Kittanning, PA 16201

b. Big Mack shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

25. Force Majeure

a. In the event that Big Mack is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire,

flood, act of God, or other circumstances beyond Big Mack's control and which Big Mack, by the exercise of all reasonable diligence, is unable to prevent, then Big Mack may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Big Mack's control. Big Mack's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Big Mack shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Big Mack to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Big Mack's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Big Mack and other information available to the Department. In any subsequent litigation, Big Mack shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it

26. Severability

The paragraphs of this Consent Order and Agreement shall be severable and should any

part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

27. Entire Agreement

This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

28. Attorney Fees

The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

29. Modifications

Except as provided in Paragraph 10, no changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

30. Titles

A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

31. Decisions under Consent Order

Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Big Mack may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

32. Successors

This Consent Order and Agreement shall be fully and completely binding upon any successor of Big Mack. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) Big Mack consolidates with or merges into or permits to merge with it and Big Mack is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially all of Big Mack's properties or assets which include, but is not limited to, voting stock of Big Mack. Successor does not include any corporation or other entity to which Big Mack transfers or assigns all or substantially all of its financial or non-financial liabilities.

Big Mack shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Consent Order and Agreement.


33. Counterpart Signatures

The parties agree that this Consent Order and Agreement may be executed by counterpart signatures, each of which shall be deemed an original agreement, and all of which together shall constitute one and the same agreement between the parties. Signatures transmitted via electronic means shall be valid and effective.

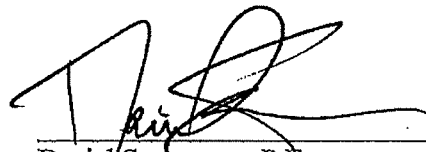
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Big Mack certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Big Mack; that Big Mack consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Big Mack hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under

Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Big Mack's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BIG MACK LEASING COMPANY
INC.:


Terry Schall,
President

FOR THE COMMONWEALTH
OF PENNSYLVANIA,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION:


Daniel Sammarco, P.E.
District Mining Manager

T.S.
Name
Attorney for Big Mack Leasing Co. Inc.
(or initials of company officer indicating
waiver of opportunity for attorney review)

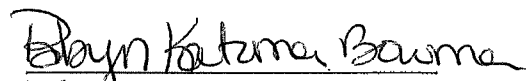

Robyn Katzman Bowman
Assistant Counsel
Southcentral Region OCC

EXHIBIT LIST
BIG MACK TRUST COA

- EXHIBIT A - Consent Order and Agreement dated December 22, 2009
- EXHIBIT B - Post-Mining Treatment Trust Agreement dated December 22, 2009
- EXHIBIT C - Topographic Site Map
- EXHIBIT D - Iselin Mine Raw Water Quality Sample Results
- EXHIBIT E - Diagram depicting the MD11 and TP1D Treatment Systems
- EXHIBIT F - Consent to Right of Entry for the Iselin Mine Treatment Systems
- EXHIBIT G - AMDTreat Cost Estimates for the MD11 and TP1D Treatment Systems
- EXHIBIT H - AMDTreat Recapitalization Cost Schedule for the MD11 and TP1D Treatment Systems
- EXHIBIT I - AMDTreat Treatment Bond/Trust Calculator
- EXHIBIT J - Graphical Depiction of Primary Trust Valuation and Primary Target Valuation
- EXHIBIT K - Graphical Depiction of Adjustment to Primary Target Valuation
- EXHIBIT L - Model Bill of Sale and License Agreement for Personal Property

EXHIBIT A

CO # 103010
Env # 254693

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:	:	Violations of the Surface Mining
	:	Conservation and Reclamation Act
Big Mack Leasing Co., Inc.	:	and the Clean Streams Law
568 Silvis Hollow Road	:	Young Township
Kittanning, PA 16201	:	Indiana County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 22ND ^{JW} day of December, 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Big Mack Leasing Co., Inc. ("Big Mack").

- A. The Department is the agency with authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.1 et seq., ("Clean Streams Law"), the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §1396.1 et seq., ("Surface Mining Act"), Section 1917-A of the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17, and the Rules and Regulations of the Environmental Quality Board adopted thereunder ("Rules and Regulations").
- B. Big Mack is a Pennsylvania corporation owned and operated by Terry L. Schall, with a business address of 568 Silvis Hollow Road, Kittanning, Pennsylvania 16201, whose business includes the mining of coal by the surface mining method.
- C. At all times material hereto, Big Mack was authorized to conduct surface mining in Pennsylvania pursuant to Surface Mining Operator's License No. 4375, which expired on January 21, 2007.
- D. At all times material hereto, Big Mack has operated a surface mine in Young Township; Indiana County, pursuant to Permit No. 32950104 ("Iselin No. 18 Mine").

- E. Big Mack was issued the permit for the Iselin No. 18 Mine on June 29, 1995. The permit authorized removal of 35.0 acres of Pittsburgh Coal on a 62.6 acre permit area. Big Mack obtained Subchapter F protection for an on-site AMD discharge, monitoring point MD11, from an abandoned Pittsburgh deep mine. Monitoring Point MD11 has an average flow of 9 gpm, according to Department SIS data records. The site was activated in April of 1997. The site is adjacent to an unnamed tributary (UNT) to Whisky Run.
- F. In January 1998, after review of Stage I bond release request CR No. 397142, the Department began investigating degradation of the UNT.
- G. On April 16, 1998, a Hydrologic Investigation by the Department, in response to Stage I bond release request CR No. 397142, found a seep zone identified as TP1. The Department concluded that Big Mack was responsible for TP1. TP1 has an average flow of 13 gpm, according to Department SIS data records. At that time, the water quality of subchapter F monitoring point MD11 had not worsened.
- H. Both TP1 and MD11 flow into the headwaters of the UNT. The headwaters of the UNT begin very close to the toe of the backfill for the Iselin No. 18 Mine. The UNT continues to flow southwest for approximately 2,000 feet and then enters a large pre-act coal refuse pile where a large, abandoned deep mine discharge enters the stream. The abandoned deep mine discharge has an average flow of 350 gpm, according to Department SIS data records.
- I. By October 3, 1998, Big Mack had completed a collection system for TP1 and had installed an anoxic drain on the site. From October 1998 until October 2005, Big Mack continued to provide needed maintenance to the installed passive treatment system and amendments to the abatement plan for the site.
- J. On February 2, 2006, the Department notified Big Mack that the monitoring data for Subchapter F monitoring point MD11 showed an excursion of a subchapter F subtle trigger for iron during the 2004-2005 water year (October through September). Subchapter F condition No. 9 in the permit requires that the Operator shall commence treatment within

30 days of notification, unless the operator can affirmatively demonstrate that the increase in pollution load was caused by factors not attributable to the mining operation.

- K. On April 13, 2006, the Department issued Big Mack a Notice of Violation for failing to comply with the conditions of the permit, concerning the excursion of a subchapter F subtitle trigger at MD11.
- L. On November 20, 2006, the Department issued Big Mack a Notice of Violation for failure to submit a comprehensive abatement plan by December 13, 2006, that would lead to properly designed, constructed, and maintained treatment facilities for the discharges, TP1 and MD11, on the Iselin No. 18 Mine.
- M. On December 13, 2006, the Department issued Big Mack a compliance order for failure to design, construct, and maintain treatment facilities capable of treating the mine discharges, TP1 and MD11, emanating from the Iselin No. 18 Mine. Big Mack did not appeal the compliance order.
- N. On January 17, 2007, the Department issued another compliance order due to Big Mack's failure to comply with the December 13, 2006 compliance order, in that Big Mack failed to design, construct, and maintain treatment facilities capable of treating the mine discharges, TP1 and MD11, emanating from this permit by January 5, 2007. Big Mack did not appeal the compliance order.
- O. On March 19, 2007, the Department suspended Big Mack's permit for failing to comply and/or a lack of ability or intention to comply with the Surface Mining Reclamation and Conservation Act and/or the Clean Stream Law, and the Rules and Regulations of the Department.
- P. On April 27, 2007, the Department suspended Big Mack's Surface Mining Operator's License, no. 4375, for failing to comply and/or a lack of ability or intention to comply with

the Surface Mining Reclamation and Conservation Act and/or the Clean Stream Law, and the Rules and Regulations of the Department.

Q. On August 20, 2007, the Department declared forfeit the bonds posted by Big Mack. This forfeiture was based on Big Mack's failure to correct violations, comply with the Surface Mining Conservation and Reclamation Act and/or the Clean Streams Law, and the Rules and Regulations of the Department, and failure to pay outstanding civil penalties. Big Mack did not appeal the forfeiture.

R. The Department declared the following bonds forfeited:

Bond No.	Type of Bond	Amount	Bank
521	Letter of Credit	\$110,600.00	Farmers National Bank
526	Letter of Credit	\$ 9,800.00	Farmers National Bank- Kittanning
540	Letter of Credit	\$ 4,200.00	Farmers National Bank- Kittanning
579	Letter of Credit	\$ 400.00	Farmers National Bank- Kittanning

S. The violations, for which the bonds posted by Big Mack were forfeited by the Department, have not been corrected. The Department has not collected the bonds.

T. Section 3.1(b) of the Surface Mining Act, 52 P. S. § 1396.3(a)(b), states in part: The Department shall not issue any surface mining operator's license or renew or amend any license if it finds, after investigation and an opportunity for an informal hearing, that a person, partner, associate officer, parent corporation, or subsidiary corporation, has failed and continues to fail to comply or has shown a lack of ability or intention to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the Department of a declaration of forfeiture of a person's bonds.

U. Section 3.1(d) of the Surface Mining Act, 52 P. S. § 1396.3 (a)(d), states in part: The Department shall not issue any surface mining permit or renew or amend any permit if it finds, after investigation and an opportunity for an informal hearing, that (1) the applicant

has failed and continues to fail to comply with any provisions of this act or of any acts repealed or amended hereby or (2) the applicant has shown a lack of ability or intention to comply with any provision of this act or of any acts repealed or amended hereby as indicated by past or continuing violations. Any person, partnership, association, or corporation which is engaged in unlawful conduct as defined in Section 18.6 [52 P. S. § 1396.24] or which as a partner, associate officer, parent corporation, subsidiary corporation, contractor or subcontractor which is engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the Department.

- V. In an April 27, 2009, meeting with the Department, Big Mack informed the Department of its desire to rehabilitate itself from forfeited operator status, clear its compliance history by resolving all remaining outstanding compliance issues, pay outstanding civil penalties, and thereby be allowed to obtain a mining license and/or mining permit.
- W. During the excavation for the construction of proposed treatment facilities for discharge MD11, Big Mack will intercept incidental Pittsburgh coal under low cover. Big Mack is authorized to remove only the coal that must be moved to allow construction of the treatment facilities. The amount of incidental coal has been estimated to be about 3,500 tons.
- X. As a part of the resolution of its outstanding violations and as a condition of rehabilitating the company, Big Mack will establish a long term financial assurance in the form of a trust to provide for perpetual operation and maintenance of the treatment systems. The Department has given Big Mack copies of the standard Department trust documents.
- Y. The parties have agreed to negotiate a second consent order and agreement concerning the trust within six months of the date of this agreement. For purposes of the trust and the second agreement, the parties have agreed to an estimated trust fund target value of \$ 250,000. The Department will use actual cost figures from the first year of operation following construction to recalculate the trust fund target value. Except as set forth in

Paragraph 5 below, the details concerning costs will be set forth in the second consent order and agreement.

The parties desire to resolve the foregoing matters without resorting to further litigation.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Big Mack, as follows:

1. *This Consent Order and Agreement* is an Order of the Department authorized and issued pursuant to: Section 5 of The Clean Streams Law, 35 P.S. §691.5; Section 4.3 of The Surface Mining Act, 52 P.S. §1396.4c; and Section 1917-A of The Administrative Code, *supra*. The failure of Big Mack to comply with any term or condition of this Consent Order and Agreement shall subject Big Mack to all penalties and remedies provided by those statutes for failing to comply with an Order of the Department.
2. *Findings.*
 - a. Big Mack agrees that the findings in Paragraphs A through Y are true and correct and, in any matter or proceeding involving Big Mack and the Department, Big Mack shall not challenge the accuracy or validity of these findings.
 - b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.
3. *Treatment Systems.*
 - a. Within 30 days of the date of the Consent Order and Agreement, Big Mack shall submit complete design plans for the treatment of MD11.
 - b. Within 60 of the date of the Consent Order and Agreement, Big Mack shall submit to the Department complete design plans for the upgrades needed

for the TP1 treatment system.

- c. Big Mack shall commence construction of the MD11 treatment system and TP1 treatment system upgrades by no later than May 1, 2010, and complete the construction, including seeding and mulching, no later than September 30, 2010.
 - d. Big Mack shall submit to the Department a written Operations and Maintenance Plan for each of the treatment systems.
 - e. Big Mack shall monitor the available water quantity and quality for both treatment systems: influent, treated effluent, and downstream at Monitoring Point 26 monthly for twelve (12) months.
 - f. Big Mack shall keep, and provide to the Department quarterly, separate and accurate records of capital costs and costs for operation and maintenance of the treatment systems for MD11 and TP1, which will be used by the Department to determine the necessary funding level for the treatment trust fund.
4. *Coal Removal.* Big Mack is authorized to remove incidental coal from the Pittsburgh seam that is encountered during the construction of the treatment system for MD11.
5. *Treatment Trust Fund.*
- a. Within sixty days of the date of this agreement, Big Mack shall establish a treatment trust fund with a Department approved trustee in accordance with standard Department procedures and using forms acceptable to the Department.
 - b. Once the treatment system for MD11 is built and the treatment system for TP1 is upgraded, Big Mack shall track all treatment costs to allow calculation of the treatment trust target value. The trust fund balance shall be calculated to provide adequate funds for long term treatment of discharges MD11 and TP1 in accordance with standard Department procedures.
 - c. Within sixty days of the date of this agreement, Big Mack shall deposit Nine Thousand Dollars (9,000.00) into the treatment trust fund.

- d. Within sixty days of the date of this agreement, Big Mack shall assign all of the existing collateral bonds, referenced in Paragraph R, to the treatment trust fund or deposit the cash equivalent to these bonds in the treatment trust fund within seven (7) days of its establishment. If the collateral bonds are assigned to the treatment trust fund, Big Mack may seek release of these bonds in accordance with 25 PA Code §§ 86:170-175 once all of the terms and conditions of this Consent Order and Agreement are completed and Big Mack fully funds the treatment trust fund.
- e. Big Mack shall deposit 15% of the gross sales proceeds of the incidental coal into the treatment trust fund within 15 days of the sale of the coal.
- f. Big Mack shall make monthly payments into the treatment trust fund by the 15th of every month. The first payment is due within 90 days after the signing of this Consent Order and Agreement.
 - i. If the bonds are assigned to the treatment trust fund, the amount due will be \$10,000.00 per month.
 - ii. If the cash equivalent of the bonds is deposited in the treatment trust fund, the amount due will be \$5,000.00 per month.
 - iii. The monthly payments may cease after the treatment trust fund reaches an initial target value of \$250,000.00. If the Department's treatment trust fund calculations at that time indicate that the amount needed for the treatment trust fund exceeds \$250,000.00, the monthly payments will continue until the treatment trust fund target is met. If the Department's treatment trust fund calculations indicate that the amount needed for the treatment trust fund is less than \$250,000.00 the monthly payments shall cease when the treatment trust fund target is fully met.

- 6. *Civil Penalties.* In resolution of the Department's claim for civil penalties and upon signing this Consent Order and Agreement, Big Mack shall pay a civil penalty of One Thousand Dollars (\$1,000.00) for the violations set forth above in Paragraph M and N.

The payment shall be made by corporate check or the like, made payable to: the Commonwealth of PA, and sent to PA DEP, Attention: Mining Permit and Compliance Specialist, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

7. *Operator Requirements.*

- a. In order for Big Mack to rehabilitate its ability to obtain a mining license and mining permit, Big Mack, upon signing this Consent Order and Agreement, agrees to comply with all terms and conditions specified in this Consent Order and Agreement.
- b. The Department will send written notice that Big Mack's obligations under this Consent Order and Agreement have terminated only when Big Mack demonstrates to the Department's satisfaction that all the required terms and conditions, outlined in Paragraphs 3 and 5 above, have been completed.
- c. If the Department determines that Big Mack has completed the terms and conditions, in the time and manner set forth in Paragraphs 3 and 5 above, Big Mack shall be deemed to no longer be in violation of the statutes, rules, regulations, and permits which govern surface coal mining in Pennsylvania and shall be eligible to apply for a surface mine operator's license and mining permits under Sections 3.1(b) and (d) of the Surface Mining Act, 52 P. S. §§ 1396.3(a)(b) and (d).
- d. Should the Department determine that Big Mack has not completed any of the terms and conditions set forth in Paragraphs 3 and 5 in this Consent Order and Agreement, the Department shall notify Big Mack of that failure in writing. No credit will be given for partial performance of Big Mack's obligations. Big Mack shall have thirty (30) days from the date of the notice to correct any such defects.
- e. If Big Mack fails to comply with any of the terms and/or conditions specified in this Consent Order and Agreement, the Department will revoke and/or suspend any mining permit or mining license issued to Big Mack or in which Big Mack is recorded in an ownership or control interest in such permit and/or license without prior notice, and all outstanding civil penalty and reclamation

liability will remain in effect. The Department will also collect all the bonds that were previously forfeited for this operation, referenced in Paragraph R.

8. *No Right to Appeal.* Big Mack waives any rights it may have to appeal or otherwise contest in any forum or proceeding any action taken by the Department pursuant to or in connection with this Consent Order and Agreement.
9. *Stipulated Penalties.* In the event Big Mack fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Big Mack shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) per day for each violation. The penalty shall be due automatically and without notice. Such penalty payments shall be payable monthly on or before the fifteenth (15) day of each succeeding month, and shall be forwarded as described in Paragraph 6 (Civil Penalties) above. It is understood by the parties hereto that payment of any money hereunder shall neither constitute a waiver of Big Mack's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Big Mack's compliance with the terms and conditions of this Consent Order and Agreement, or any applicable statute, rule, regulation, permit, or order of the Department.
10. *Existing Obligations Unaffected.* Nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to relieve or limit Big Mack's obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.
11. *Reservation of Rights.* With regard to matters not addressed by this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil and criminal actions, for any past, present or future violation of any statute, regulation, permit or order, or for any pollution or potential pollution to the air, land or waters of the Commonwealth.

12. *Limited Waiver.* As to matters addressed by this Consent Order and Agreement, the Department waives only the right to seek civil penalties above the amount specified in Paragraph 6 (Civil Penalties) above. The Department reserves all other rights to institute equitable, administrative, civil and criminal actions with respect to any matter addressed by this Consent Order and Agreement, including the right to require additional measures, to achieve compliance with applicable law.
13. *Remedies for Breach.* Big Mack's failure to comply with any provision of this Consent Order and Agreement shall be deemed a material breach, and in the event of any such breach, the Department may, in addition to the remedies prescribed herein, institute any equitable, administrative, civil or criminal action, including an action to enforce this Consent Order and Agreement and an action to obtain any civil penalties waived by Paragraph 12 (Limited Waiver). These remedies are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.
14. *Liability of Operator.* Big Mack shall inform all persons necessary for the implementation of this Consent Order and Agreement of the terms and conditions of this Consent Order and Agreement. Big Mack shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for Big Mack.
15. *Correspondence with the Department.* All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:
- John P. Varner, District Mining Manager
District Mining Operations, Cambria District Office
286 Industrial Park Road
Ebensburg, PA 15931-4119
16. *Correspondence with the "Operator".* All correspondence with the operator concerning this Consent Order and Agreement shall be addressed to:

Terry L. Schall, President
Big Mack Leasing Co., Inc.
568 Silvis Hollow Road
Kittanning, PA 16201

17. *Force Majeure.*

- a. In the event that Big Mack is prevented from complying in a timely manner with any time limit imposed in the Consent Order and Agreement solely because of strike, fire, flood, Act of God, or other circumstances beyond Big Mack's control and which Big Mack, by the exercise all reasonable diligence, is unable to prevent, then Big Mack may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Big Mack's control. Big Mack's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.
- b. Big Mack shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as an affidavit from an authorized individual specifying the reasons for delay, and the efforts which have been made and are being made by Big Mack to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. Big Mack's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.
- c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Big Mack and other information available to the Department. In any subsequent litigation, Big Mack shall have the burden of proving that the Department's refusal to grant


the requested extension was an abuse of discretion based upon the information then available to it.

18. *Severability.* The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.
19. *Entire Agreement.* This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.
20. *Modifications.* No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.
21. *Attorney Fees.* The parties agree to bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.
22. *Decisions under Consent Order.* Any decision which the Department makes under the provisions of this Consent Order and Agreement shall not be deemed to be a final action of the Department, and shall not be appealable to the Environmental Hearing Board or to any court. Any objection which Big Mack may have to the decision will be preserved until the Department enforces this Consent Order and Agreement. At no time, however, may Big Mack challenge the content or validity of this Consent Order and Agreement, or challenge the Findings agreed to in this Consent Order and Agreement.
23. *Titles.* A title used at the beginning of any paragraph of this Consent Order and Agreement is provided solely for the purpose of identification and shall not be used to interpret that paragraph.


24. *Counterpart Signatures.* The parties agree that this Consent Order and Agreement may be executed by counterpart signatures transmitted via electronic means.

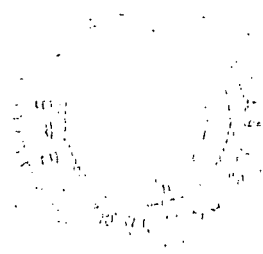
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Big Mack certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Big Mack; that Big Mack consents to the entry of this Consent Order and Agreement and the foregoing Findings as an ORDER of the Department; and that Big Mack hereby knowingly waives its right to appeal this Consent Order and Agreement and the foregoing Findings, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a); and Chapters 5A and 7A, or any other provision of law. Signature by Big Mack's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BIG MACK LEASING CO., INC.


Terry L. Schall
Owner/President
(CORPORATE SEAL)

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


John P. Varner
District Mining Manager



Attorney for Big Mack Leasing Co., Inc.

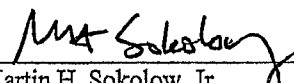

Martin H. Sokolow, Jr.
Attorney for the Department

EXHIBIT B

IN THE MATTER OF: Big Mack Leasing Company, Inc.

POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT

This Trust Agreement ("Trust" or "Agreement") entered into this 22ND day of December, 2009, by and among Big Mack Leasing Company, Inc. ("Big Mack"), with its principal place of business at 568 Silvis Hollow Road, Kittanning, Pennsylvania 16201 ("Settlor"), and the Somerset Trust Company, with its principal place of business at 131 North Center Avenue, P. O. Box 1330, Somerset, Pennsylvania 15501 and incorporated under the laws of the Commonwealth of Pennsylvania ("Trustee").

WHEREAS, the Settlor is currently negotiating a Consent Order and Agreement (such Consent Order and Agreement, as amended hereafter, referred to as the "CO&A"), with the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter referred to as "Department" or "Beneficiary") which will contain, among other things, a requirement that the Settlor provide financial guarantees to assure that funds will be available to provide for the Settlor's legal obligation to operate two mine drainage treatment systems (hereinafter referred to as the "Facilities") to treat and otherwise prevent discharges of mine drainage emanating from or hydrologically connected to Settlor's mine;

WHEREAS, the treatment systems for the TP1 and MD11 discharges on Big Mack's Iselin No. 18 Mine Site (SMP No. 32950104) located in Young

Township, Indiana County, will consist of an anoxic drain passive treatment system which has already been constructed for discharge TP1 and a series of SAPS that will be constructed for discharge MD11 during the summer of 2010. The treated discharges will flow to an unnamed tributary to Whisky Run, a water of the Commonwealth;

WHEREAS, the Pennsylvania Surface Mining Conservation and Reclamation Act ("SMCRA"), requires a permittee to post with the Department a bond for each operation conditioned upon the permittee performing all of the requirements of SMCRA, the Clean Streams Law and the Coal Refuse Disposal Control Act and SMCRA further provides for the bond to be released where all reclamation standards have been satisfied with the exception of consistently meeting mine drainage effluent standards provided the operator has made provisions with the Department for the sound future treatment of the pollutional discharges, 52 P.S. §1396.4(d) and (g);

WHEREAS, the use of a trust fund is authorized as an alternative financial assurance mechanism under provisions of SMCRA which contemplate such a trust is for the public purpose of protecting the environment and the health and welfare of the public, without limitation on duration, and is a means which provides for the sound future treatment of pollutional discharges. 52 P.S. §1396.4(d) and (d.2), 25 *Pa. Code* §86.158(f);

WHEREAS, the Settlor has elected to establish this Trust pursuant to negotiations with the Department to assure funds are available to provide for

Settlor's legal obligation to provide funds for the treatment of the post-mining discharges;

WHEREAS, the Settlor, acting through its duly authorized officers or representatives and with the approval of the Department, has selected the Trustee under this Agreement;

WHEREAS, the Trustee has been induced, and has agreed and is willing to perform the duties as are required to be performed pursuant to this Agreement;

WHEREAS, the Trustee is a Pennsylvania chartered or national bank or financial institution with trust powers or a trust company, with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency;

WHEREAS, the Department has joined in this Agreement to indicate its acceptance of the terms and conditions set forth in, as well as the powers and authorities granted by, this Agreement;

WHEREAS, the Department has stated that, to the best of its knowledge and belief, the Facility currently has been, and is, in compliance with all required federal and state permits and approvals necessary and required for the operation and maintenance of the Facility; and

WHEREAS, except as set forth in the CO&A, Settlor represents that, to the best of its knowledge, there are no violations of any environmental law regulating the Facility or the Property, as they are hereinafter defined, and that

the Facility is operating in compliance with all applicable permits and approvals.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

ARTICLE ONE

Establishment of Trust

§1.1 The Settlor and the Trustee hereby establish this Trust for the benefit of the Department, or its successor, to be utilized for the primary purpose of addressing environmental obligations related to Settlor's mining activities permitted under SMCRA or the Coal Refuse Disposal Control Act or the Bituminous Mine Subsidence and Land Conservation Act and under the Clean Streams Law which includes providing for the continued operation and maintenance of the Facility. For purposes of this Agreement, operation includes, but is not limited to, the operation, maintenance and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.2 The Settlor and the Trustee intend for the Department to be legal beneficiary of this Trust and to have all rights of a beneficiary under the law, as well as all rights granted under this Trust Agreement. The Department, as beneficiary, shall have access to the Trust as provided herein.

§1.3 The Trust principal, excluding any surety bonds held for the benefit of the Trust as hereinafter provided, shall consist of:

- (a) The initial payment or transfer to the Trustee of \$9,000.00 by Settlor.
- (b) Certain easements, rights of entry and real and personal property including buildings, structures, fixtures and appurtenances described in the deed attached as Exhibit "A" (the "Properties") or which may be conveyed to or acquired by the Trust in the future. Any real property shall be conveyed to the Trust by fee simple deed free and clear of all liens. Title will be fully insurable by a standard title insurance policy.
- (c) Certain personal property described in Exhibit "B".
- (d) Ongoing Payments to be made by the Settlor in the amounts and on the dates specified in Exhibit "C" and such other payment as may be made from time to time by the Settlor.
- (e) Cash, funds or property transferred from any other person to the Trust and accepted by the Trustee as directed by the Department.
- (f) All investments, reinvestments, assets or proceeds attributable to or derived from the items listed in this subparagraph.

§1.4 All of the preceding payments proceeds and assets referred to in Sections 1.3 hereof shall constitute the Trust principal, which together with all earnings, accretions and profits therefrom, less any payments or distributions made by

the Trustee pursuant to the terms of this Trust Agreement, shall constitute the Trust Fund.

§1.5 The Trustee shall establish within the Trust Fund two subaccounts: a subaccount designated as the Primary Trust Account and a subaccount designated as the Capital Improvement Account. The Trustee shall deposit the Trust principal identified in Sections 1.3 through 1.4 into the Primary Trust Account. The Trustee shall transfer funds into the Capital Improvement Account from the Primary Trust Account as directed by the Department and shall deposit into the Capital Improvement Account funds received from any person for deposit into this Account. The Capital Improvement Account principal may be commingled with the principal of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of separate and distinct funds. The Trustee shall manage and make disbursements from the two subaccounts in accordance with the provisions of ARTICLE TWO, Distribution Payments, and ARTICLE THREE, Trust Management, as set forth in this Trust Agreement.

§1.6 The Trust Fund and any other real and personal property held by the Trustee pursuant to this Trust Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Settlor and shall not be subject or applied to the debts, obligations or liabilities of the Settlor, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at

law or in equity. Furthermore, the Settlor shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Trust Agreement that Settlor's entry into the Trust shall extinguish and remove all of Settlor's interest in the Trust from Settlor's estate under the Bankruptcy Code or similar laws.

§1.7 All payments made to the Trust or deposits into the Trust by the Settlor shall be irrevocable once made, and upon delivery thereof, by or on behalf of the Settlor, all interest of the Settlor therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§1.8 The Trust Fund shall be held, administered, invested and reinvested by the Trustee, IN TRUST, as hereinafter provided, and all distributions therefrom shall be made in accordance with the provisions of this Trust Agreement.

§1.9 Any monetary payments made by the Settlor or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment or collection thereof, but the Trustee shall notify the Department of any deficiencies in the payments required to be made by the Settlor or on its behalf whenever the Trustee has knowledge of such deficiencies.

ARTICLE TWO

Distribution Payments

§2.1 The Trustee shall make distribution payments from the Trust upon the written order of the Department and the Department shall designate the subaccount from which such disbursement payment shall be made. The Department shall have the authority to designate, in writing, any person or entity to receive distribution payments from the Trust. The Trustee shall, upon receipt of written order for distribution payment from the Department, make distribution payments from the Trust as directed in the Department's written order. The Trustee shall be fully protected and entitled to rely upon the written orders of the Department and shall not be liable to any party for acting in accordance with those directions.

§2.2 The Trustee is authorized and shall, upon the written order of the Department, enter into contracts, and take title to easements, rights of way and other property interests and property as necessary to carry out the purposes of the Trust. The Trustee is authorized, upon the written order of the Department, to contract with or otherwise engage the services of, and pay reasonable compensation to, such persons or entities as the Trustee may require to carry out this provision. This authorization is in addition to the other powers granted to the Trustee by this Trust Agreement with regard to the retention and compensation of agents. Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be acquired or provided

on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

§2.3 Except as provided by this Trust Agreement, no other disposition of monies shall be made unless directed, in writing, by the Department.

ARTICLE THREE

Trust Management

§3.1 The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income. The Trustee shall add to principal any income not distributed pursuant to the provisions of this Agreement.

§3.2 The Trustee shall have a fiduciary duty to act at all times in the best interest of the Trust. It shall be the responsibility and sole authority of the Trustee to make decisions concerning investment and disposition of the assets of the Trust, and the Trustee shall discharge its investment duty in a manner designed to meet the goals of the Trust. Subject to section 3.3(j), the Trustee shall seek to manage the Trust with that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs.

§3.3 In order to accomplish the purpose of the Trust as stated in § 1.1, the Trustee shall manage and invest the assets of the Trust in a manner designed to generate a long-term annualized effective rate of return of at least 9.28%

after subtraction of all fees, taxes and expenses. For purposes of investing or reinvesting the assets in the Trust, the Trustee shall have investment discretion subject to the following guidelines, unless and until the Department provides other directions:

- (a) The Trustee shall invest and reinvest the corpus of the Trust, and income therefrom, in a mixture of common stocks and bonds in a ratio of approximately 80% common stock and 20% bonds.
- (b) The Trustee may purchase shares of any mutual funds or "money market funds" which have their assets invested in equity shares or fixed income securities, including any mutual fund for which the Trustee or any affiliate may be an advisor, subadvisor, manager, custodian or Trustee.
- (c) The Trustee may purchase any equity shares listed on a national or regional stock exchange or capable of being valued in accordance with any other daily-recognized valuation methodology.
- (d) The Trustee may purchase any bonds listed on a national exchange or capable of being valued in accordance with any other daily-recognized valuation methodology, including, but not limited to, bonds or obligations of any state or municipality, or that are obligations of or are guaranteed by the United States of America.
- (e) The Trustee may invest in any interest bearing bank account or "money market" account.

- (f) The Trustee may sell at public or private sale any shares acquired under this article.
- (g) In regard to any shares or other equity interests the Trustee may hold, the Trustee may join in any merger, reorganization, voting-trust plan or any other concerted action of owners or shareholders.
- (h) The Trustee, in the exercise of its investment powers, may utilize puts and calls, short sales, options and warrants or other investment strategies generally recognized as prudent when utilized to enhance returns, reduce risk or mitigate loss.
- (i) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, shall invest such cash in overnight investments.
- (j) The Trustee shall not be responsible for any losses incurred hereunder whether it is due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.
- (k) The Trustee may not invest in high-risk non-transparent investment instruments, such as collateralized debt obligations, credit-default swaps, hedge funds or derivatives.

ARTICLE FOUR

Express Powers of Trustee

§4.1 Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the power herein granted.
- (b) To register any securities held in the Trust in its own name or in the name of a nominee and to hold any security in bearer form or book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Trust and that such

securities are not co-mingled with or made a part of any other account of another customer of the Trustee or the Trustee itself.

- (c) To deposit any cash in the Trust in interest-bearing accounts maintained by the Trustee, to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.
- (d) To hold title to real and personal property and to generally exercise all rights and privileges appurtenant to any property held by the Trustee as may be necessary to preserve, protect, maintain, operate, transfer, convey or sell *such* property, and to execute and deliver any and all instruments which may be necessary or expedient in any powers granted under this Trust Agreement.

However, the Trustee shall not have the power to transfer, convey or sell the property described in Exhibits "A" and "B" without written authorization from the Department.

- (e) To purchase public liability insurance and fire insurance, when directed to do so by the Department, to cover the operation, maintenance, improvement and all other activities associated with the real and personal property held by the Trust. The Trustee and the Commonwealth of Pennsylvania shall be listed on the policy as additional insureds. The insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the amounts of \$500,000 per

person and \$1,000,000 per occurrence. The fire insurance shall be in the amount determined by the Department.

ARTICLE FIVE

Advice of Counsel

§5.1 The Trustee may, from time to time, consult with counsel of its own choosing with respect to any question arising as to the construction or interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be protected, to the extent permitted by law, in acting in good faith on the advice of counsel.

§5.2 The Trustee shall not be required to furnish any bond or security in any jurisdiction.

§5.3 No person dealing with the Trust or the Trustee shall be obligated to inquire as to the authority of the Trustee in connection with the acquisitions, investment, management or disposition of the Trust assets or in connection with the exercise of any other power granted under this Agreement.

ARTICLE SIX

Claims

§6.1 The Trustee shall not initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust without the written consent of the Department.

§6.2 The Trustee shall give prompt written notice to the Department of each claim in favor of or against the Trust, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Department of any controversies, demands, actions, losses, damages, costs or expenses or any other matter which the Trustee believes is likely to give rise to a claim.

§6.3 The Department shall have the right, but not the duty to: (1) direct the Trustee to initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust, and (2) participate in the prosecution of or defense against, any claim in favor of or against the Trust. To the extent the Department directs the Trustee to assume prosecution or defense, the Trustee shall retain counsel of the Department's choosing or counsel selected by the Trustee and approved by the Department. If the Department directs the Trustee to assume prosecution or defense of any claim, the Trustee shall prosecute or defend the claim at the expense of the Trust, and the Trustee shall be entitled to assess against the Trust Fund all costs associated with the prosecution or defense. Upon notice to the Trustee that the Department will assume prosecution or defense, the Trustee will not be responsible for the subsequent prosecution or defense nor for any loss ensuing therefrom. If the Department fails to instruct the Trustee with respect to the prosecution or defense of any claim, the Trustee may prosecute or defend any claim at the expense of the Trust, but shall be under no duty to do so, and shall have no

liability for its failure or refusal to prosecute or defend the claim if it deems such action to be in the best interest of the Trust.

ARTICLE SEVEN

Evaluation and Reports

§7.1 The Trustee shall at least quarterly furnish to the Department and to the Settlor a statement providing an accounting of all transactions involving the Trust and confirming the value of the Trust. Such statement shall value Trust investments at market value, which shall be that market value, determined not more than thirty (30) days prior to the date of statement. Should the Settlor cease to exist or have its bonds forfeited, the Trustee is to discontinue providing any such statement to Settlor.

§7.2 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies and assets under this Trust Agreement. In addition, whenever called upon to do so, the Trustee shall exhibit to the Settlor, should the Settlor be in existence, and the Department all documents, instruments or reports relating to the Trust or the Trust Fund. The Trustee shall also cause to be prepared all income tax returns required to be filed with respect to the Trust and shall execute and file such returns. The Department, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax returns.

ARTICLE EIGHT

Expenses, Taxes and Trustee Compensation

§8.1 Compensation of the Trustee and all other reasonable and customary expenses incurred by the Trustee, including fees for legal services rendered to the Trustee, shall be taken and paid from the Trust at the time that the Trustee shall deem appropriate. Trustee shall be paid a fee, quarterly, based on the schedule of fees attached hereto and marked Exhibit "D". The Trustee must provide the Department written notice of any proposed future changes of the Trustee's schedule of fees. The Department has thirty (30) days after receipt of the proposed changes to approve or disapprove the proposed changes to the Trustee's schedule of fees.

§8.2 The Trust is intended to be categorized, for federal income tax purposes, as a grantor trust in accordance with and under the provisions of United States Treasury Regulation Section 301.7701-4(e)(1), (2), (3) and (4) and any implementing regulations cited therein or any corresponding successor provision. All federal taxes of any kind that may be assessed or levied against or in respect of the Trust shall be paid by the Settlor and shall not be taken from the Trust. The Trustee shall enter into such Agreements with the Settlor as are necessary to carry out this provision.

- (a) Should it be determined this Trust is taxable for federal income tax purposes and the Settlor fails, refuses or is unable to pay these taxes, the Settlor and Trustee agree the Department shall have the right to appeal the decision to the appropriate authority. Should

the Department not prevail on appeal or should federal law change such that the Trust becomes taxable for federal income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust or to take other measures to meet the requirements of federal law such that the Trust would not be taxable for federal income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust or to take measures to meet the requirements of federal law for the Trust to become tax exempt, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust for federal income tax purposes.

Notwithstanding any provision of this subsection (a) to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the Consent Order and Agreement between the Department and the Settlor executed the same day as this Trust Agreement.

§8.3 The Trust is intended to be categorized, for state income tax purposes, as a Pennsylvania charitable trust.

- (a) Should it be determined this Trust is not a charitable trust or Pennsylvania law changes so this Trust becomes taxable for

Pennsylvania income tax purposes, then Settlor agrees that Settlor will contribute to the Trustee the amount of the Pennsylvania income tax assessed or levied against or in respect of the Trust.

The Trustee shall use the money contributed by the Settlor to pay the income tax assessed or levied against or in respect of the Trust.

The money to pay the tax assessed or levied against the Trust shall not be taken from the Trust. The Trustee shall enter into such agreements with the Settlor as are necessary to carry out this provision.

- (b) If, at any time, it is determined by a taxing authority with jurisdiction in the matter that this Trust is not a Pennsylvania charitable trust, the Settlor and the Trustee agree the Department shall have the right to appeal the decision to the appropriate authority. Should the Department not prevail on appeal or should Pennsylvania law change such that the Trust becomes taxable for Pennsylvania income tax purposes, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust or to meet the requirements of Pennsylvania law such that the Trust would not be taxable for Pennsylvania income tax purposes. If the Department elects not to exercise its right to petition to reform the Trust, then the Trustee is empowered with the right to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania

charitable trust for Pennsylvania income tax purposes.

Notwithstanding any provision of this subsection (b) to the contrary, the Trust may not be reformed such that the purpose and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the Consent Order and Agreement between the Department and the Settlor executed the same day as this Trust Agreement.

§8.4 If at any time that the Trust itself shall become liable for any taxes, and if the Settlor shall fail, refuse or be unable to pay these taxes from its own funds, then the Trustee shall pay from the Trust Fund all such taxes then due and owing. As soon as possible after the happening of the Settlor failing, refusing or becoming unable to pay such taxes, except to the extent that the Settlor disputes the payment of such taxes in good faith, the Trustee and the Department shall negotiate and enter into an Agreement in respect of Trustee's payment of the taxes during the continuance of this Agreement. Further, unless the Department and the Trustee otherwise agree to the contrary, immediately upon the happening of the Settlor's failure, refusal or inability to pay any such taxes, the Trustee is directed and empowered (notwithstanding any provision of this Agreement to the contrary) to change the investment objective of the Trust to an objective which minimizes the tax liability of the Trust, giving due consideration to market conditions so as to avoid, to the

extent possible, losses on the conversion of existing instruments. In carrying out this investment objective, the Trustee shall invest in the following:

- (a) Any bonds or obligations of any state or municipality that are exempt from federal income tax.
- (b) Shares of any mutual fund or "money market fund" which has one hundred percent (100%) of its assets invested in the investments of the type described in the preceding subsection (a).
- (c) Such other investments as may be approved by the Department.

ARTICLE NINE

Successor Trustee

§9.1 The Trustee may resign or the Settlor may replace the Trustee at Settlor's discretion, which discretion is limited to replacement with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. Any such action, however, shall only be effective by the Settlor after giving sixty (60) days notice to the Department. The Trustee's resignation or replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department, which confirmation will not be unreasonably withheld. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall

specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and Department, by certified mail, return receipt requested, not less than ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay-over to the successor trustee the funds and properties then constituting the Trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

§9.2 The Department may replace the Trustee at the Department's discretion with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. The trustee's replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and Department, by certified mail, return receipt request, not less than ten days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall

assign, transfer, convey and pay over to the successor trustee the funds and properties in constant between the trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

ARTICLE TEN

Instructions to the Trustee

§10.1 All orders and instructions by the Department to the Trustee shall be in writing, and signed by the Deputy Secretary for Mineral Resources, the Director of the Bureau of Mining and Reclamation, the Director of the Bureau of District Mining Operations, the District Mining Manager, or such other persons as the Department may designate by amendment, in writing, to this Agreement. The Trustee shall be fully protected and shall not be liable to any party while acting in accordance with the Department's orders and instructions, when such orders and instructions are authorized by the Agreement and consistent with the Trustee's fiduciary duty to the Trust, and, to the extent necessary, shall be held harmless from the Trust fund. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on behalf of the Department hereunder has occurred. The Trustee, upon receipt of orders, requests or instructions by the Department which are signed by a

person purporting to be designated by the Department, but not listed above or in any written amendment to this Agreement, shall with due diligence ascertain if such persons are designated by the Department and have authority to act on behalf of the Department hereunder.

§10.2 The Trustee may request and rely upon the written instruction of the Department with respect to decisions concerning the operation of the Facility and any other treatment facilities which may be required in the future.

Decisions concerning investment and disposition of the assets of the Trust are the sole responsibility of the Trustee, and the Trustee shall act in a manner consistent with its fiduciary duty to the Trust, notwithstanding instructions of the Department related to investment and disposition of assets which may be to the contrary.

ARTICLE ELEVEN

Trustee Exculpation

§11.1 The Trustee shall not be responsible for the enforcement or policing of any environmental action nor be required to defend any claims relating thereto. The Trustee shall be a mere title holder and "fiduciary" as defined in the Pennsylvania Act entitled: "The Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act," Act No. 3 of 1995, P.L. 33, 35 P.S. §§6027.1 through 6027.14, and its liability shall be limited as provided under Section 6 of the Act, 35 P.S. §6027.6.

§11.2 As to all actions taken by the Trustee with respect to the administration of the Trust, the Trustee shall not be answerable or liable for the exercise or nonexercise of any discretion or power under this Agreement nor for anything whatever in connection with the Trust hereunder, except for its own gross negligence or willful misconduct or that of its agents. Except in the case of the Trustee's own gross negligence or willful misconduct, the Trustee shall be entitled to be exonerated and indemnified from the Trust Fund against any and all losses, claims, costs, expenses and liabilities arising out of in connection with the administration or distribution of the Trust Fund or the affairs of the Trust. The provisions of this section shall also extend to the employees and agents of the Trustee.

ARTICLE TWELVE

Irrevocability and Termination

§12.1 The Trust shall be irrevocable and, except as provide in §16.5 of ARTICLE SIXTEEN hereof, shall continue from the date of inception, unless otherwise terminated by the occurrence of any one of the following:

- (a) The Department determines that the Trust is no longer required.
- (b) The Trustee determines that the size of the Trust does not warrant the continuation of the Trust.
- (c) The Trustee determines administration of the Trust renders it impractical to continue the Trust and the Department agrees.

- (d) Upon termination of the Trust, the Trustee shall distribute any residuum, less final trust administration expenses of the Trustee, to the Department, unless directed otherwise, in writing, by the Department.

ARTICLE THIRTEEN

Amendments

§13.1 This Trust Agreement may be amended by an instrument in writing, executed by the Settlor, the Trustee, and the Department or by the Trustee and the Department in the event the Settlor ceases to exist or has had its bonds forfeited, but during the existence of the Settlor any amendment of this Trust Agreement cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FOURTEEN

Notices

§14.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Department and the Trustee by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

Department:	Director, District Mining Operations Greensburg District Mining Office Armbrust Professional Center 8205 Route 819 Greensburg, PA 15601
-------------	---

Trustee:

Trust Officer
Somerset Trust Company
131 North Center Avenue, P. O. Box 1330
Somerset, PA 15501

§14.2 Any change in the above addresses shall be made by giving notice to all parties to the Trust.

ARTICLE FIFTEEN

Interpretation

§15.1 As used in this Agreement, words in the singular include the plural, and words in the plural include the singular. Words used in this Agreement shall be given their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

ARTICLE SIXTEEN

Construction

§16.1 This Agreement shall be constructed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

§16.2 In case of the merger or consolidation of any corporate Trustee serving hereunder, the resultant company shall become such Trustee's successor without notice to any party.

§16.3 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

§16.4 All covenants and agreements contained herein shall be binding upon and inure to benefit the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action, taken by the Department or the Trustee shall bind their successors and assigns.

§16.5 It is the intention of the parties hereto that this Trust remain in existence until terminated in accordance with the provisions of ARTICLE TWELVE hereof and that the Trust be exempt from the application of any rule against perpetuities by reason of the Department's beneficial interest herein because the Trust is authorized by the Pennsylvania Surface Mining Conservation and Reclamation Act which contemplates no limitation on duration, and because the Trust is for the public purpose of assuring funds will be available in the future to ensure the Facility will continue to be maintained and operated to protect the environment and the health and

welfare of the public. However, in the event that it is ever finally determined by a court with jurisdiction in the matter, that the Trust is subject to any such rule, then the Trust shall terminate twenty-one (21) years less one (1) day, after the death of the last descendent of Ambassador Joseph P. Kennedy living on the date of this Trust Agreement, and the Trust Fund shall be distributed to the Department, less final trust administration expenses of the Trustee.

ARTICLE SEVENTEEN

Situs

§17.1 The Trust created by this Agreement shall have a legal situs in Dauphin County, Pennsylvania.

ARTICLE EIGHTEEN

Execution

§18.1 This Declaration of Trust may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

Joseph F. Allison

ATTEST:

Terry L. Schall
Asst. Trust Officer

ATTEST:

Joseph F. Allison

SETTLORS:

BY:

Terry L. Schall
Name: TERRY L. SCHALL
Title: PRESIDENT.

BY: _____

Name:
Title:

TRUSTEE:

BY:

Ann B. Pearson
Name: Ann B. Pearson
Title: Sr. VP & Trust Officer

BY: _____

Name:
Title:

DEPARTMENT:

BY:

John P. Varner
Name: JOHN P. VARNER
Title: DISTRICT MINING MANAGER

BY: _____

Name:
Title:

Approved as to Form:

BY:

M. Sokolow
Name: MARTIN SOKOLOW JR
Title: [Counsel for Department] REGIONAL COUNSEL



Pennsylvania Department of Environmental Protection

Bureau of District Mining Operations
286 Industrial Park Road
Ebensburg, PA 15931-4119
January 5, 2010

Cambria Office

814-472-1900

Terry L. Schall, President
Big Mack Leasing Company, Inc.
568 Silvis Hollow Road
Kittanning, PA 16201

Re: Big Mack Leasing Company, Inc.
SMP #32950104, Iselin No. 18 Mine
Young Township, Indiana County

Dear Mr. Schall:

I am sending you a corrected Page 5 from the recently signed trust agreement. The original page incorrectly required an initial payment into the trust of \$30,000 in Paragraph 1.3(a). The new page has been corrected to show the proper amount of \$9,000.

I have also included copies of Exhibit C and Exhibit D that you can attach to your copy of the signed trust agreement. At the present time, there are no Exhibits A and B.

Give me a call if you have any questions about the corrected page or the Exhibits.

Sincerely,

John P. Varner
District Mining Manager

Enclosures

cc: Mike Sokolow
Wade Gallaher
Jim Fetterman
Todd Spahn, Somerset Trust
SMP File

'bk



Exhibit C

Big Mack Leasing Company, Inc. Trust Fund

Schedule of Payments

Initial Payment of \$9,000 to be deposited by February 20, 2010.

Monthly payments of \$10,000 per month to start by March 22, 2010.

Subsequent monthly payments of \$10,000 must be made by the 15th of each month from April of 2010 on until a total of \$250,000 is reached in the trust fund.

Monthly deposits can be reduced to \$5,000 per month if an additional deposit of \$125,000 is made to the trust fund any time prior to the balance reaching \$250,000.

The required trust fund balance will be recalculated once Big Mack Leasing Company has gathered accurate treatment costs for a period of one year and submitted them to the Department in accordance with the Consent Order and Agreement signed on December 22, 2009.

Exhibit D

Trustee Schedule of Fees

- **ANNUAL CHARGE**

.0065 of the first \$500,000.00 of market value

.0040 of market value over \$500,000.00

- **MINIMUM ANNUAL CHARGE**

\$500.00

Unless otherwise expressed in the instrument, all fees for services shall be first charged against income and if income is insufficient, then against principal.

The above fees are based upon market value of the trust on a quarterly basis. When the bank serves with a co-fiduciary, the bank shall be entitled to above fee and the co-fiduciary fee shall be determined at the time the account is opened and shall be in addition to the bank's fee.

- **CHECKWRITING CHARGE**

A fee of \$2.00 per check written is charged after the 5th check is written in any month.

EXHIBIT C

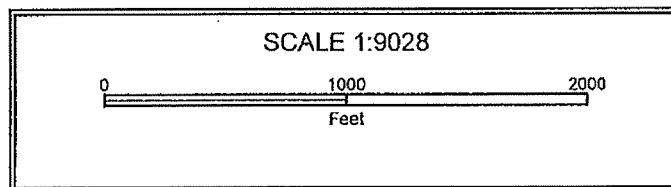
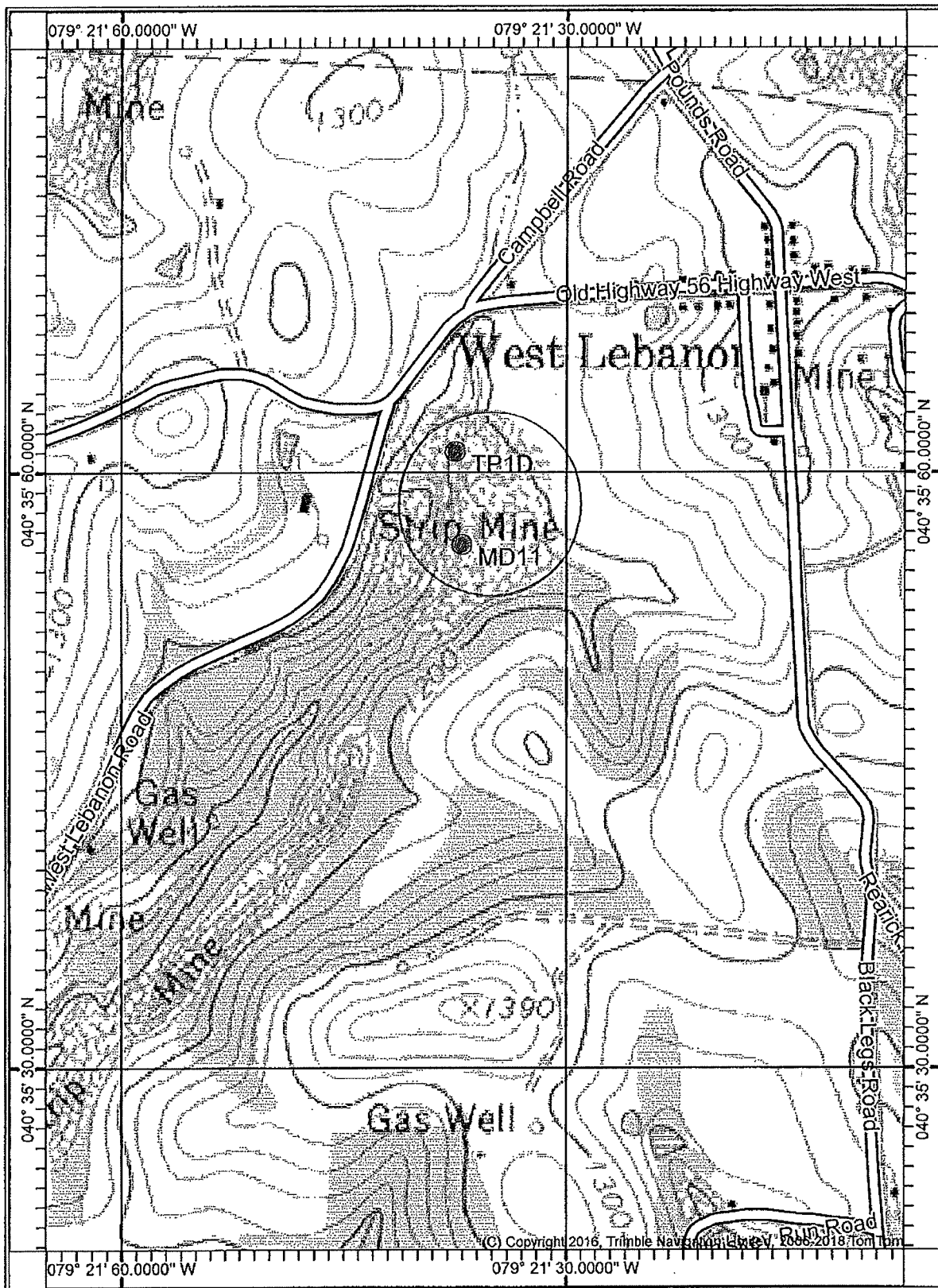


EXHIBIT D

Primary Facility: 32950104

Monitoring Point: MD11

Coll ID	Seq	Date Collected	Initial Flow	Final Flow	Determ Method	pH	pH units	ALK MG/L	HOT A MG/L	FE MG/L	MN MG/L	AL MG/L	SO4 MG/L	TSS MG/L	NA MG/L
4308	001	06/05/1996				4.7		13.6	78.00	1.49	10.8	7.19	1152.00	4.00	13.00
4308	074	07/10/1996				4.6		13.6	68.00	1.36	9.61	7.12	1107.0	5.0	13.000
4308	109	08/20/1996				3.2		0.0	230.00	5.54	7.16	21.9	470.5	<3	<10.000
4308	134	09/10/1996				3.4		0.0	152.00	4.75	5.34	15.2	427.5	4.0	<10.000
4308	176	10/03/1996				3.3		0.0	146.00	1.67	4.23	13.9	323.5	6.0	<10.000
4308	223	10/30/1996				3.4		0.0	114.00	1.41	3.24	10.4	328.7	4.0	<10.000
4308	259	12/05/1996				3.5		0.0	100.00	.963	3.39	11.7	320.2	4.0	<10.000
4308	290	01/08/1997				3.5		0.0	112.00	1.02	3.78	12.1	292.5	4.0	<10.000
4308	324	02/06/1997				3.6		0.0	88.00	.775	2.8	9.1	314.4	<3	<10.000
4308	440	03/13/1997	16.5	16.5	Meas	3.6		0.0	114.00	.61	4.42	12.5	422.8	<3	<10.000
4308	516	04/16/1997	16.5	16.5	Meas	3.6		0.0	102.00	.741	3.66	10.7	387.7	<3	<10.000
4308	573	05/13/1997				3.6		0.0	126.00	3.08	4.55	12.7	443.5	<3	<10.000
4308	651	06/05/1997	16.5	16.5	Meas	3.6		0.0	202.00	2.23	8.67	25.1	620.3	<3	<10.000
4308	733	07/11/1997	8.1	8.1	Meas	8.6		36.0	0	<3	.14	<.5	185.1	<3	<10.000
4308	786	08/07/1997	8.1	8.1	Meas	3.4		0.0	170.00	4.52	5.88	19.4	502.0	4.0	<10.000
4308	841	09/08/1997	8.1	8.1	Meas	3.4		0.0	154.00	3.49	4.45	14.6	540.6	<3	<10.000
4308	923	10/08/1997	8.1	8.1	Meas	3.4		0.0	154.00	3.73	4.37	14.4	524.8	<3	<10.000
4308	970	11/12/1997				3.7		0.0	74.00	1.83	2.88	6.71	268.0	<3	<10.000
4308	997	12/08/1997				3.6		0.0	110.00	.97	3.31	10.3	389.5	<3	<10.000
4308	126	01/21/1998				3.7		0.0	94.00	1.07	4.2	10.6	497.6	<3	<10.000
4308	171	02/06/1998				3.7		0.0	84.00	1.14	3.79	10.8	492.0	<3	<10.000
4308	200	02/12/1998				3.7		0.0	106.00	1.12	3.75	11.9	457.9	<3	<10.000
4308	234	02/24/1998				3.8		0.0	74.00	1.02	3.7	10.3	433.1	<3	11.900
4308	259	03/05/1998				3.7		0.0	98.00	.8	3.8	10.7	460.5	<3	<10.000
4308	282	03/11/1998				3.7		0.0	96.00	.973	4.4	13.2	442.0	<3	<10.000
4308	397	04/02/1998				3.7		0.0	98.00	1.17	3.87	11.6	376.2	<3	<10.000
4308	418	04/09/1998				3.6		0.0	98.00	1.39	3.48	11.4	445.3	<3	<10.000
4308	435	04/14/1998				3.6		0.0	82.00	1.16	3.09	9.1	428.6	6.0	<10.000
4308	581	05/04/1998				3.7		0.0	102.00	1.37	6.2	12.9	481.0	<3	<10.000
4308	609	05/11/1998				3.6		0.0	110.00	1.9	5.22	12.2	479.4	<3	<10.000
4308	649	05/18/1998				3.6		0.0	104.00	1.67	4.25	10.6	427.9	<3	<10.000
4308	684	05/26/1998				3.5		0.0	114.00	2.85	4.87	13.7	452.7	4.0	<10.000
4308	713	06/02/1998				3.6		0.0	134.00	5.18	5.65	14.9	516.0	<3	<10.000
4308	751	06/09/1998				3.5		0.0	134.00	2.86	5.04	14.1	513.0	<3	<10.000
4308	797	06/25/1998				3.5		0.0	142.00	3.07	4.98	14.6	530.4	<3	<10.000
4308	824	07/07/1998				3.5		0.0	138.00	2.4	4.67	14.3	552.0	<3	<10.000
4308	846	07/15/1998				3.4		0.0	108.00	3.62	4.61	14.2	540.1	<3	<10.000
4308	884	08/10/1998				3.6		0.0	90.00	3.75	3.81	10.2	533.0	<3	<10.000
4308	958	09/16/1998				3.7		0.0	74.00	3.14	4.13	10.3	641.7	<3	10.500
4308	997	10/06/1998				3.7		0.0	76.00	1.8	3.5	7.92	555.2	<3	11.300
4308	013	10/14/1998				3.8		0.0	80.00	2.12	3.78	9.91	603.3	<3	18.500
4308	071	10/26/1998				3.6		0.0	106.00	1.46	3.01	8.1	640.7	<3	25.000
4308	118	12/09/1998				3.7		0.0	98.00	3.71	4.27	12.9	723.0	<3	25.600
4308	150	01/20/1999				3.7		0.0	118.00	3.15	4.84	14.7	560.0	4.0	16.800
4308	249	02/16/1999	3.8	3.8	Meas	3.8		0.0	156.00	2.22	6.72	17.1	634.3	<3	12.700
4308	311	03/17/1999	8.89	8.89		3.7		0.0	102.00	2.11	7.81	16.9	693.3	<3	10.600
4308	396	04/22/1999				3.7		0.0	100.00	1.22	8.83	12.5	571.9	<3	<10.000
4308	441	05/20/1999	6	6		3.8		0.0	96.00	4.57	8.56	10.6	873.7	<3	<10.000
4308	476	06/21/1999	12.4	12.4		3.7		0.0	142.00	2.69	10.5	13.6	704.6	<3	10.500
4308	550	07/28/1999	12.41	12.41		3.7		0.0	144.00	4.21	9.82	16.4	791.0	<3	<10.000
4308	601	08/12/1999	12.41	12.41	Meas	3.5		0.0	144.00	3.25	9.37	17.5	967.0	<3	10.600
4308	896	10/07/1999	6.05	6.05		3.6		0.0	104.00	9.53	10.6	16.7	981.7	4.0	<10.000
4308	018	01/12/2000	8.89	8.89		3.7		0.0	11.00	3.58	7.57	11.7	698.5	<3	<10.000
4308	042	02/09/2000	8.89	8.89		3.7		0.0	84.00	4.63	10.9	15.8	859.7	<3	11.800
4308	166	03/23/2000	16.66	16.66		3.8		0.0		1.72	7.69	<.5	574.0	<3	<10.000

10/12/2018

Module 8.1A By Primary Facility

Page 2 OF 3

Primary Facility: 32950104

Monitoring Point: MD11

Coll ID	Seq	Date Collected	Initial Flow	Final Flow	Determ Method	pH	pH units	ALK MG/L	HOT A MG/L	FE MG/L	MN MG/L	AL MG/L	SO4 MG/L	TSS MG/L	NA MG/L
4308	371	07/18/2000	8.89	8.89		3.6		0.0	92.00	5.96	12.6	10.1	818.0	<3	<10.000
4308	580	10/18/2000				3.9		0.0	88.00	15.5	11	6.22	749.0	12.0	<10.000
4308	653	12/20/2000	8.89	8.89		3.9		0.0	70.00	9.41	10.1	6.43	810.4	<3	<10.000
4308	759	02/12/2001				4.0		4.4	60.0	3.49	11.8	6.45	826.2	8.0	
4308	829	04/03/2001	8.89	8.89		3.8		0.0	82.0	6.72	13.9	6.11	752.4	8.0	
4308	173	12/12/2001	6.05	6.05		3.6		0.0	127.40	15.9	13.3	4.87	763.2	20.1	
4308	248	02/14/2002	8.89	8.89		3.9		0.0	108.20	11.1	12.5	5.43	829.3	4.0	
4308	360	04/23/2002	8.89	8.89		3.9		0.0	98.40	7.81	17.2	8.85	795.9	8.0	
4308	688	03/12/2003				3.5		0.0	138.00	22.9	23.2	6.84	1144.9	18.0	
4308	086	10/15/2003	12.41	12.41		3.9		0.8	189.00	39.8	21.5	4.36	1030.0	6.0	
4308	166	12/22/2003	8.89	8.89		3.7		0.0	95.20	13.9	19.3	5.88	659.1	14.0	
4308	200	02/19/2004	12.41	12.41		3.5		0.0	190.60	29.2	28.4	11.1	1167.5	<3	
4308	246	03/23/2004	12.41	12.41		3.6		0.0	176.20	10.9	23.9	9.47	979.8	4.0	
4308	297	04/20/2004	8.89	8.89		3.8		0.0	113.40	7.28	19.6	7.01	1070.2	4.0	
4308	381	05/26/2004	8.89	8.89		3.8		0.0	139.80	15.9	21.2	6.76	812.2	<3	
4308	422	06/29/2004	6.05	6.05		3.6		0.0	147.60	19.9	23.3	7.02	1019.5	<3	
4308	468	07/29/2004	6.05	6.05		3.5		0.0	179.60	31.9	26.3	5.24	1155.2	20.0	
4308	633	10/25/2004	6.05	6.05		3.5		0.0	279.00	33.4	30	25	1144.4	4.0	
4308	708	01/25/2005	8.91	8.91		3.5		0.0	167.20	7.49	24.5	17	1032.1	<3	
4308	741	02/16/2005	12.41	12.41		6.8		61.6	5.00	6.51	18.8	8.31	774.4	68.0	
4308	765	03/16/2005	8.89	8.89		3.6		0.0	127.80	7.86	23.6	9.78	1091.4	10.0	
4308	834	04/13/2005	8.89	8.89		3.6		0.0	136.40	4.92	20.5	7.24	1087.8	<3	
4308	700	09/29/2005	3.83	3.83		3.6		0.0	166.60	29.1	24.1	4.26	1153.4	<3	
4308	722	10/19/2005	3.83	3.83		3.6		0.0	194.40	33.7	20.3	3.17	1118.6	8.0	
4308	743	11/30/2005	8.89	8.89		3.8		0.0	125.60	26.4	19.5	4.45	800.7	<3	
4308	773	01/30/2006	12.41	12.41		3.7		0.0	186.00	14.5	29.4	7.34	1416.4	<3	
4454	001	08/21/2006	8	8	Est	3.4		0.0	164.20	24.8	21	3.16	1248.2	16.0	
4454	203	11/14/2006	10	10	Est	3.4		0.0	168.40	28.14	29.19	4.27	1087.1	10.0	
4454	004	01/04/2007	8	8	Est	3.6		0.0	161.80	25.4	29.4	4.06	1387.5	<3	
4454	066	03/05/2007	10	10	Est	4.0		2.6	69.40	6.25	15.8	2.88	784.4	<3	
4454	005	01/07/2008	10	10	Est	3.8		0.0	169.60	28.7	32.1	5.54	1258.8	4.0	
4454	462	11/17/2009				3.8		0.0	89.60	8.149	33.56	.814	1019.5	12	

Note: after 2009 this point was used to sample the outfall of the new PTS Ponds, also the original MD11 raw discharge flow migrated subsurface to a new location

03/30/2015

Module 8.1A By Primary Facility

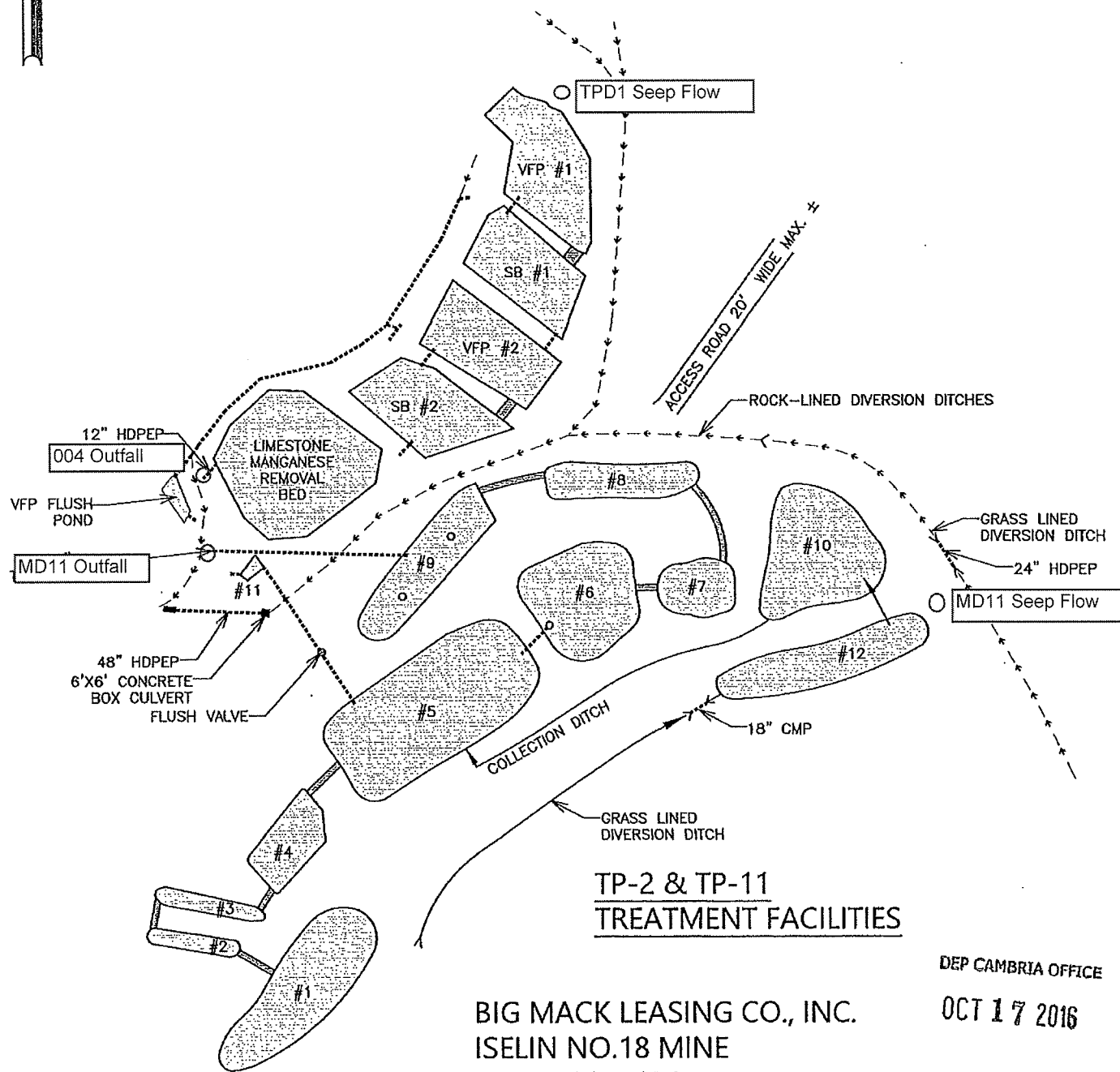
Page 1 Of

Primary Facility: 32950104

Monitoring Point: TP1D

Coll ID	Date Collected	Initial Flow	Final Flow	Determ Method	pH	pH units	ALK MG/L	HOT A MG/L	FE MG/L	MN MG/L	AL MG/L	SO4 MG/L	TSS MG/L	NA MG/L
4308 129	01/21/1998				5.7		38.0	80.00	13.9	24.7	10	1054.8	52.0	11.500
4308 173	02/06/1998				5.6		30.0	54.00	12.3	23.2	7.01	891.3	40.0	13.200
4308 202	02/12/1998				6.6		130.0	0	4.33	8.93	3.12	1035.0	32.0	34.700
4308 236	02/24/1998				6.1		36.0	6.80	4.54	10.2	4.73	397.7	44.0	<10.000
4308 261	03/05/1998				4.8		15.4	66.00	3.31	21.6	9.84	1075.7	18.0	22.700
4308 284	03/11/1998				4.7		13.4	106.00	3.63	23.8	10.5	1069.0	<3	23.400
4308 342	03/20/1998				7.2		248.0	0	.925	2.52	.947	1539.5	<3	53.700
4308 400	04/02/1998				5.3		26.0	82.00	12.4	28.2	5.59	1153.4	22.0	23.300
4308 421	04/09/1998				6.2		48.0	0.00	9.13	6.75	5.28	441.1	108.0	15.100
4308 584	05/04/1998				5.0		14.2	64.00	5.09	19.6	5.06	897.0	20.0	24.100
4308 612	05/11/1998				5.0		15.0	88.00	10	24.2	5.04	1092.1	4.0	23.800
4308 651	05/18/1998				4.2		5.6	48.00	1.89	12.2	2.35	246.2	38.0	<10.000
4308 686	05/26/1998				4.6		7.8	42.00	1.99	10.6	1.7	270.1	<3	<10.000
4308 715	06/02/1998				4.6		9.0	40.00	4.4	12.7	2.72	233.0	<3	<10.000
4308 749	06/09/1998				4.9		10.6	30.00	<.3	<.05	<.5	243.0	8.0	<10.000

EXHIBIT E



**TP-2 & TP-11
TREATMENT FACILITIES**

BIG MACK LEASING CO., INC.
ISELIN NO.18 MINE
SMP#32950104
YOUNG TWP., INDIANA CO.

DEP CAMBRIA OFFICE

OCT 17 2016

SCALE:

N.T.S.



MINETECH ENGINEERS INC.
ALTOONA, PENNSYLVANIA

DATE:

10-13-16

EXHIBIT F

Original to
File 7-23-18

5600-FM-BMP0470 12/2013

pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTIONCOMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING PROGRAM

32950104

Permit No.

**CONSENT TO RIGHT OF ENTRY FOR OPERATION AND MAINTENANCE OF A
MINE DRAINAGE TREATMENT FACILITY COVERED BY A BOND OR A
POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT**

Property Owner(s): List everyone with an ownership interest in the property which is the subject of this Agreement.

Name: William J. McIntire Estate

Name: _____

Address: PO Box 171, Shelocta, PA 15774

Address: _____

WHEREAS, the Property Owner(s) own surface property containing 77.98 acres located in Young Township, Indiana County, Pennsylvania, and described in Deed Book Volume 1293, Page 665, in the Indiana County Recorder's Office (the Property); parcel id 43-004-100

WHEREAS, the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) is authorized to administer and enforce the Surface Mining Conservation and Reclamation Act, 52 P.S. §§ 1396.1-1396.19a, the Clean Streams Law, 35 P.S. §§ 691.1-691.1001, and their implementing regulations, including requiring the construction, operation and maintenance of facilities designed to remediate the effects of mine drainage;

WHEREAS, Big Mack Leasing Co., Inc. ("Operator") conducted surface mining activities on or adjacent to the Property pursuant to Surface Mining Permit No. 32950104;

WHEREAS, DEP has determined that mine drainage caused by *Operator's* mining activities is discharging from or passing through the Property, and the mine drainage on the Property is causing pollution, or a danger of pollution, to waters of the Commonwealth;

WHEREAS, *Operator* is required, under the mining law and its surface mining permit, to construct, operate and maintain mine drainage treatment facilities on a portion of the Property (the Treatment Facility Property), for purposes of treating the pollutional discharge(s);

WHEREAS, a map showing the boundaries of the Treatment Facility Property is attached as Exhibit A;

WHEREAS, *Operator* has posted a bond with the Department, or has established a trust with a financial institution as an alternative financial assurance mechanism, in order to provide sufficient funds to guarantee *Operator's* legal obligation to operate and maintain the mine drainage treatment facilities on the Property and the *Operator's* obligation for long-term treatment, or abatement, of the post-mining pollutional discharge(s) on the Property;

WHEREAS, to assure compliance with its legal obligations, *Operator* and DEP [*and the Trustee*] must have access to the Treatment Facility Property to conduct and/or oversee the mine drainage treatment activities required by law and the mining permit;

WHEREAS, *Operator* and *DEP* have requested and the Property Owner(s) is willing to grant *Operator* and DEP [*and Trustee*] a right of entry into, under, over and upon the Treatment Facility Property to construct, operate and maintain mine drainage treatment facilities;

WHEREAS, the Property Owner(s) acknowledge that treatment of the mine drainage on the Property will provide benefits to the Property Owner and to the Commonwealth through abatement of a nuisance, restoration of land affected by mining operations, and prevention of pollution to waters of the Commonwealth;

9/20/2018 3:27 PM 32950104

5600-FM-BMP0470 12/2013

NOW THEREFORE, in consideration of the benefits which the Property Owner(s) and the general public will receive, and with the intention of being legally bound, it is agreed as follows:

1. Right of Entry. The Property Owner(s) hereby grants and conveys to *Operator* and DEP [and *Trustee*], its employees, agents, servants, contractors and subcontractors, a right of entry into, under, over and upon the Treatment Facility Property. This right of entry includes all necessary rights of ingress, egress and regress with all personnel, materials, and equipment needed to perform the discharge treatment activities.

2. Duration of Right of Entry. The term of this Right of Entry shall extend for the length of time necessary to complete the discharge treatment activities in accordance with applicable law. It is specifically understood and agreed that the term of this Right of Entry extends for the length of time necessary to operate and maintain all mine drainage treatment facilities on the Treatment Facility Property, and shall only terminate when such treatment facilities are no longer necessary to remediate or prevent pollution to waters of the Commonwealth.

3. Insurance. DEP will require *Operator* to obtain and keep in force insurance coverage in accordance with the requirements of 25 Pa. Code § 86.168.

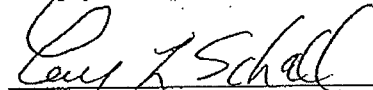
4. Property Use. During the term of this Right of Entry, the Property Owner(s) will not, without the written consent of DEP, make any use of the Property which will interfere with the construction, operation or maintenance of the mine drainage treatment facilities installed on the Treatment Facility Property.

5. Notification. This Consent to Right of Entry shall be recorded by *Operator* in the Indiana County Recorder's Office within thirty days of its execution. In the event that the Property Owner(s) intends to sell, lease, or otherwise transfer any interest in the Property prior to the termination of this Right of Entry, the Property Owners shall advise the prospective owner or lessee of the terms and conditions of this Right of Entry. The Property Owner(s) shall advise DEP, by notifying the Department representative whose signature appears below or his successor, of the intent to sell the Property prior to any sale.

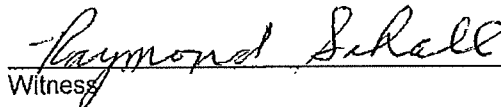
6. Representation of Interests. The Property Owners represent that they are the only persons authorized to grant access to the Treatment Facility Property.

7. Binding on Successors. All the covenants, representations, consents, waivers and agreements contained herein shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

For [Operator]

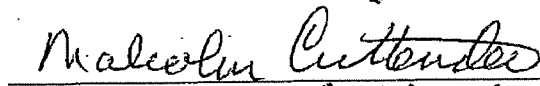


Name: Terry L. Schall
Title: President

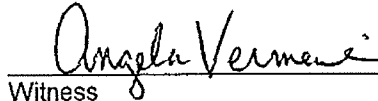


Witness

For the Department of Environmental Protection:



Name: Malcolm Crittenden
Title: Watershed Manager

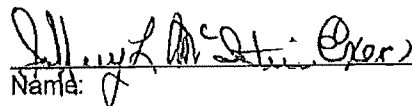


Witness

IN WITNESS WHEREOF, each of the parties set its respective hand and seal, for itself, its heirs, executors, administrators, successors and assigns, intending to be legally bound, this 27th day of June, 2018.

The Property Owner(s)

(Each owner sign and print
their name under the signature.)



Name: William L. McArthur, Jr.

5600-FM-BMP0470 12/2013

ACKNOWLEDGEMENT

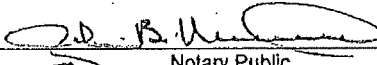
STATE OF Pennsylvania :
 :
COUNTY OF Indiana : ss

On this, the 27 day of June, 2018, before me, the undersigned Notary, personally appeared

Jeffery L. McIntire, Executor of the Estate William J. McIntire
(Name (s))

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to this instrument, and who acknowledged that (he, she or they) have executed the same and desire it to be recorded.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

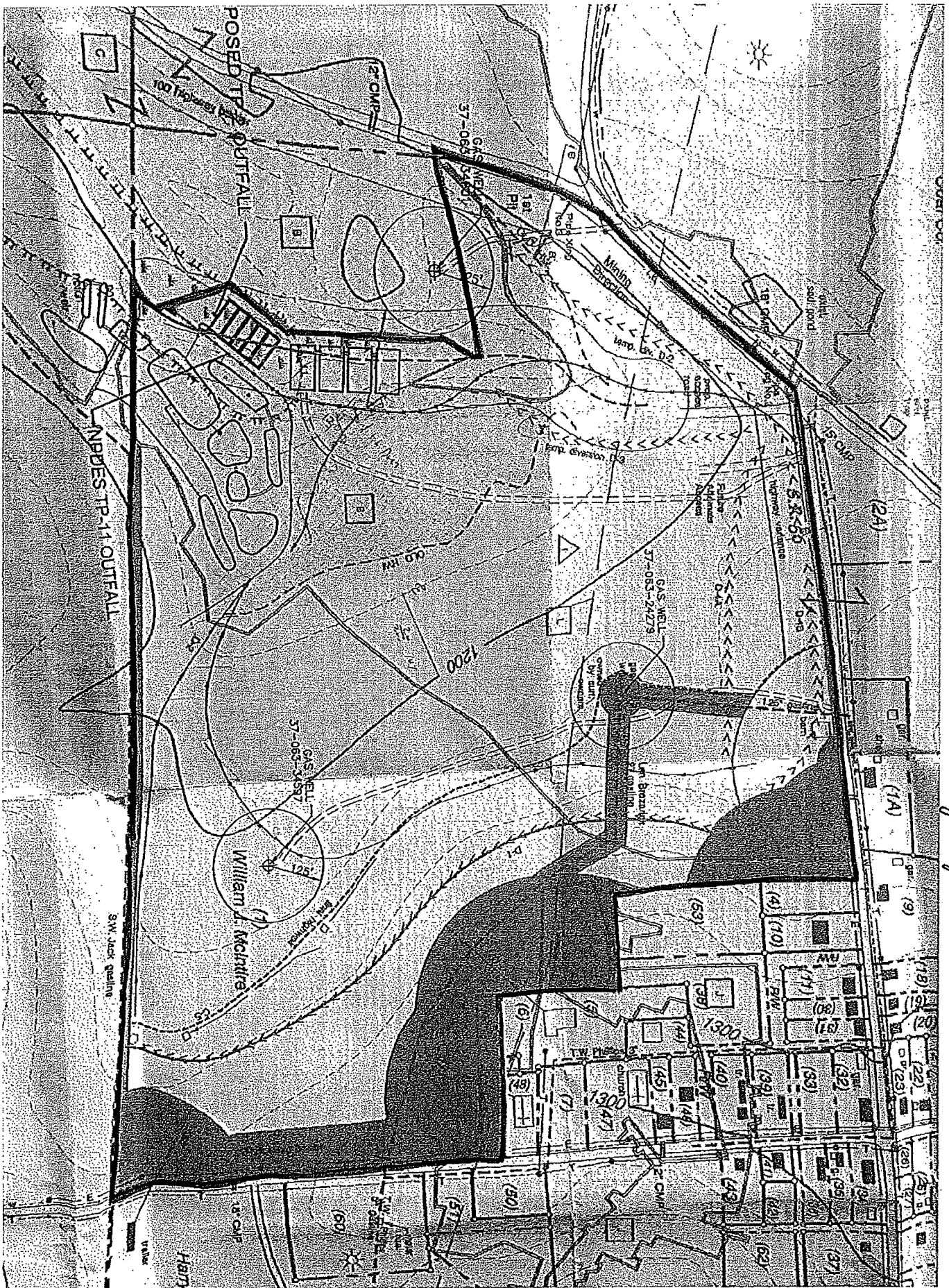
(SEAL) 
Notary Public

My Commission Expires: Nov. 15, 2019

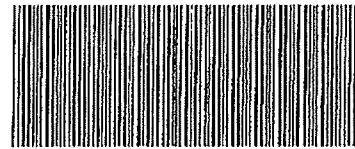
COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
JOHN B. MAXWELL, Notary Public
Armstrong Township, Indiana County
My Commission Expires November 15, 2019

Big Mack Leasing Co. Inc. SMP 32950104 Young Twp Indiana Co.



Indiana County
825 Philadelphia Street
Indiana, PA 15701
Phone: (724) 465-3860
Email: pswarman@countyofindiana.org



0787494-0006

RECORDING COVER PAGE

Page 5 of 5

Instrument Type: Consent
Instrument Date: 07/11/2018 01:32:26 PM
Instrument Number: 2018-293146

Transaction #: 831665
Instrument Page Count: 4

RETURN TO: (Envelope)
BIG MACK LEASING COMPANY INC
30 POUNDS ROAD
WEST LEBANON, PA 15783

SUBMITTED BY:
BIG MACK LEASING COMPANY INC
30 POUNDS ROAD
WEST LEBANON, PA 15783

INSTRUMENT REFERENCE NAME: MCINTIRE/BIG MACK LEASING COMPANY INC

FEES / TAXES:

Recording Fee: Consent \$28.50

Total: \$28.50

Document Number: 2018-293146
Recorded Date: 07/11/2018

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Indiana County, Pennsylvania



Patricia Streams-Warman
Patricia Streams - Warman
Recorder of Deeds

NOTE: If document data differs from cover sheet, document data always supersedes.
*COVER PAGE MAY NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT
FOR ANY ADDITIONAL INFORMATION.

DO NOT REMOVE - THIS PAGE IS PART OF THE RECORDED DOCUMENT.

EXHIBIT G

Company Name Big MackProject Big MackSite Name Iselin #18**AMD TREAT****Costs****AMD TREAT MAIN COST FORM****AMDTREAT**

<u>Passive Treatment</u>	<u>A</u>	<u>S</u>	
Vertical Flow Pond			\$0
Anoxic Limestone Drain			\$0
Anaerobic Wetlands			\$0
Aerobic Wetlands			\$0
Manganese Removal Bed			\$0
Oxic Limestone Channel			\$0
Limestone Bed			\$0
BIO Reactor			\$0
Passive Subtotal:			\$0
<u>Active Treatment</u>			
Caustic Soda			\$0
Hydrated Lime			\$0
Pebble Quick Lime			\$0
Ammonia			\$0
Oxidants			\$0
Soda Ash			\$0
Active Subtotal:			\$0
<u>Ancillary Cost</u>			
Ponds			\$0
Roads			\$0
Land Access			\$0
Ditching			\$0
Engineering Cost			\$0
Ancillary Subtotal:			\$0
Other Cost (Capital Cost)			\$0
Total Capital Cost:			\$0
<u>Annual Costs</u>			
Sampling	1	0	\$2,000
Labor	1	0	\$1,046
Maintenance	1	0	\$252
Pumping			\$0
Chemical Cost			\$0
Oxidant Chem Cost			\$0
Sludge Removal			\$0
Other Cost (Annual Cost)			\$3,908
Land Access (Annual Cost)			\$0
Total Annual Cost:			\$7,206
Other Cost	1	0	

Water Quality

Design Flow	<input type="text" value="0.00"/>	gpm
Typical Flow	<input type="text" value="0.00"/>	gpm
Total Iron	<input type="text" value="0.00"/>	mg/L
Ferrous Iron	<input type="text" value="0.00"/>	mg/L
Aluminum	<input type="text" value="0.00"/>	mg/L
Manganese	<input type="text" value="0.00"/>	mg/L
pH	<input type="text" value="0.00"/>	su
Alkalinity	<input type="text" value="0.00"/>	mg/L
TIC	<input type="text" value="0.00"/>	mg/L

☒ Calculate Net Acidity☐ Enter Hot Acidity manuallyAcidity mg/LSulfate mg/LChloride mg/LCalcium mg/LMagnesium mg/LSodium mg/LWater Temperature CSpecific Conductivity uS/cmTotal Dissolved Solids mg/LDissolved Oxygen mg/LTypical Acid Loading tons/yr

Total Annual Cost: per
1000 Gal of H2O Treated \$0.000

Company Name . Big Mack

Printed on 10/26/2018

Project Big Mack

Site Name Iselin #18

AMD TREAT SAMPLING



AMDTREAT

Sampling Name

☐ Estimate Sampling Cost

1. Unit Labor Cost \$/hr

2. Collection Time per Sample hours/sample

3. Travel Time hr

4. Sample Frequency samples/mo

5. Lab Cost Per Sample \$/sample

6. Number of Sample Points points

☒ Enter Established Annual Sampling Cost

7. Actual Annual Sampling Cost \$

Sampling Sub-Totals

8. Yearly Sample Analysis Cost \$

9. Yearly Travel Cost \$

10. Yearly Collection Cost \$

11. Sampling Cost \$

Record Number 1 of 1

Company Name Big Mack

Printed on 10/26/2018

Project Big Mack

Site Name Iselin #18



AMDTREAT

AMD TREAT

LABOR

Labor Name

☒ Estimate Labor Cost

1. Site Visits per Week

2. Site Labor Time per Visit hours

3. Travel Time per Visit hours

4. Unit Labor Cost \$/hour

☐ Enter Established Annual Labor Cost

5. Actual Annual Labor Cost \$

6. Total Cost \$

Record Number 1 of 1

Company Name Big Mack

Project Big Mack

Site Name Iselin #18



AMDTREAT

AMD TREAT

MAINTENANCE

☐ Estimate Maintenance Cost

- 1. Percent of Active Cost %
- 2. Percent of Passive Cost %
- 3. Percent of Ancillary Cost * %
- 4. Percent of Other Capital Cost %

☒ Enter Established Annual Maintenance Cost

5. Annual Maintenance Cost \$

Maintenance Sub-Totals

- 6 Total Maintenance Active Cost \$
- 7. Total Maintenance Passive Cost \$
- 8. Total Maintenance Ancillary Cost \$
- 9. Total Maintenance Other Capital Cost \$

10. Total Maintenance Cost \$

* Ancillary Cost does not include Cost for
Land Access and Engineering Cost

Company Name Big MackProject Big MackSite Name Iselin #18

AMD TREAT OTHER COST

AMD TREAT

Other Cost Name

A. Description of Item	B. Unit Cost Per Item	C. Quantity	D. Total Item Cost	E. Capital Cost Annual Cost
1. Insurance	2,253.00	1	2,253	<input type="radio"/> Capital Cost <input checked="" type="radio"/> Annual Cost
2. Sludge Removal	880.00	1	880	<input type="radio"/> Capital Cost <input checked="" type="radio"/> Annual Cost
3. Pond Certification	775.03	1	775	<input type="radio"/> Capital Cost <input checked="" type="radio"/> Annual Cost
4.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
5.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
6.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
7.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
8.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
9.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
10.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
11.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
12.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
13.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
14.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost
15.	0.00	0	0	<input checked="" type="radio"/> Capital Cost <input type="radio"/> Annual Cost

Record Number

1 of 1

Current Capital Cost \$Current Annual Cost \$Total Capital Cost \$Total Annual Cost \$

EXHIBIT H

Company Name Big MackProject Big MackSite Name Iselin #18

AMD TREAT RECAPITIALIZATION COST



AMD TREAT

 Calculation Period 75 yrs Inflation Rate 3.10 % Net Return Rate 8.43 %
Recapitalization Name

A.	B	C	D	E	F	G
Description of Item	Unit Cost Per Item	Quantity	Total Item Cost	Life Cycle	Number of Periods	Total PV
1. Inlet Ponds MD11 System (TP11)	5,000	4	20,000	15	5	17,297
2. VFP	24,000	1	24,000	10	7	35,543
3. Settling Basins	5,000	2	10,000	15	5	8,648
4. Wetland Ponds	7,000	2	14,000	15	5	12,108
5. Limestone Bed	8,000	1	8,000	10	7	11,848
6. De-sludge settling basins	7,000	2	14,000	10	7	20,733
7.	0	0	0	0	0	0
8. Settling Basins TP1D System (TP-2, 004)	7,000	2	14,000	15	5	12,108
9. VFP	22,000	2	44,000	10	7	65,162
10. Limestone Bed	16,000	1	16,000	10	7	23,695
11. De-sludge Settling basin	8,000	2	16,000	10	7	23,695
12. Access Roads	5,000	1	5,000	10	7	7,405
13. RipRap Stream Channel	11,000	1	11,000	10	7	16,291
14. Ditching	3,000	1	3,000	10	7	4,443
15.	0	0	0	0	0	0
16.	0	0	0	0	0	0
17.	0	0	0	0	0	0
18.	0	0	0	0	0	0
19.	0	0	0	0	0	0
20.	0	0	0	0	0	0

 Total Capital Cost 199,000 \$ PV Grand Total 258,975 \$

Company Name Big Mack

Printed on 10/31/2018

Project Big MackSite Name Iselin #18

AMD TREAT RECAPITIALIZATION COST

Life of Trust Fund 75 yrs
 Inflation Rate 3.10 %
 Return Rate 8.43 %

AMD TREAT

Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule	Year	Trust Fund Growth Fund Before Payout	Trust Fund Growth Fund After Payout	Payout Schedule
	258,975	258,975	Initial Fund Amount				
1	280,806	280,806	0	51	938,645	938,645	0
2	304,478	304,478	0	52	1,017,773	1,017,773	0
3	330,146	330,146	0	53	1,103,571	1,103,571	0
4	357,977	357,977	0	54	1,196,603	1,196,603	0
5	388,155	388,155	0	55	1,297,476	1,297,476	0
6	420,876	420,876	0	56	1,406,853	1,406,853	0
7	456,356	456,356	0	57	1,525,451	1,525,451	0
8	494,827	494,827	0	58	1,654,047	1,654,047	0
9	536,541	536,541	0	59	1,793,483	1,793,483	0
10	581,772	390,432	191,339	60	1,944,674	701,955	1,242,719
11	423,345	423,345	0	61	761,129	761,129	0
12	459,033	459,033	0	62	825,293	825,293	0
13	497,730	497,730	0	63	894,865	894,865	0
14	539,688	539,688	0	64	970,302	970,302	0
15	585,184	493,497	91,687	65	1,052,098	1,052,098	0
16	535,099	535,099	0	66	1,140,790	1,140,790	0
17	580,208	580,208	0	67	1,236,959	1,236,959	0
18	629,119	629,119	0	68	1,341,235	1,341,235	0
19	682,154	682,154	0	69	1,454,301	1,454,301	0
20	739,660	480,007	259,652	70	1,576,899	382,015	1,194,883
21	520,472	520,472	0	71	414,219	414,219	0
22	564,348	564,348	0	72	449,137	449,137	0
23	611,922	611,922	0	73	487,000	487,000	0
24	663,508	663,508	0	74	528,054	528,054	0
25	719,441	719,441	0	75	572,569	0	572,569
26	780,090	780,090	0	76	0	0	0
27	845,852	845,852	0	77	0	0	0
28	917,157	917,157	0	78	0	0	0
29	994,474	994,474	0	79	0	0	0
30	1,078,308	581,014	497,293	80	0	0	0
31	629,994	629,994	0	81	0	0	0
32	683,102	683,102	0	82	0	0	0
33	740,688	740,688	0	83	0	0	0
34	803,128	803,128	0	84	0	0	0
35	870,831	870,831	0	85	0	0	0
36	944,242	944,242	0	86	0	0	0
37	1,023,842	1,023,842	0	87	0	0	0
38	1,110,152	1,110,152	0	88	0	0	0
39	1,203,738	1,203,738	0	89	0	0	0
40	1,305,213	827,061	478,151	90	0	0	0
41	896,783	896,783	0	91	0	0	0
42	972,381	972,381	0	92	0	0	0
43	1,054,353	1,054,353	0	93	0	0	0
44	1,143,235	1,143,235	0	94	0	0	0
45	1,239,610	1,010,487	229,122	95	0	0	0
46	1,095,672	1,095,672	0	96	0	0	0
47	1,188,037	1,188,037	0	97	0	0	0
48	1,288,188	1,288,188	0	98	0	0	0
49	1,396,783	1,396,783	0	99	0	0	0
50	1,514,531	865,669	648,862	100	0	0	0

EXHIBIT I

TREATMENT BOND/TRUST CALCULATOR

(c) 2003, 2005, 2006, 2007 by SCMF

Prepared For:
Treatment System(s) ID:

Big Mack

Date (mm/dd/yy):

Inflation Rate:	3.1%
Yrs to Treat start:	0
Annual Treatment Cost:	\$7,206.03
Trust Fees:	1.50%
Bond (not needed for rec):	\$0.00
Investment Ratios:	
stock:	80%
bond:	20%
Effective Rate of Return:	8.43%
Volatility Index:	1.16
Rec Bond Rate of Return:	6.00%
Remaining Time on Permit:	5 years

Options	O&M only	Total with Recap	Total with Recap & Insurance
option #1			
conventional bond:	\$297,856.29	\$905,270.82	\$948,860.38
bond adjustment:	\$297,856.29	\$905,270.82	\$948,860.38
option #2			
fully funded trust:	\$165,188.17	\$424,163.17	\$433,886.51
			bond in year 6
			trust in year 1

PV of Recap (today's \$) @	8.43%	Eff RoR &	3.1% Inf:	\$258,975.00 for trust in year 1
PV of Recap (today's \$) @	6.00%	Eff RoR &	3.1% Inf:	\$521,425.00 for bond in year 1
				\$607,414.53 for bond in year 6

Liability Insurance Factor @	\$1.00 per year, per \$1000 in the total PV of the Trust:	\$424.16 per year	PV Insurance:	\$9,723.35
Liability Insurance Factor @	\$1.00 per year, per \$1000 in total Bond:	\$905.27 per year	PV Insurance:	\$37,418.75

Fields in RED can be updated
Fields in BLUE are fixed or calculated
Fields in GREEN are partial amounts
Highlighted Fields in GREEN are final amounts

EXHIBIT J

EXHIBIT K

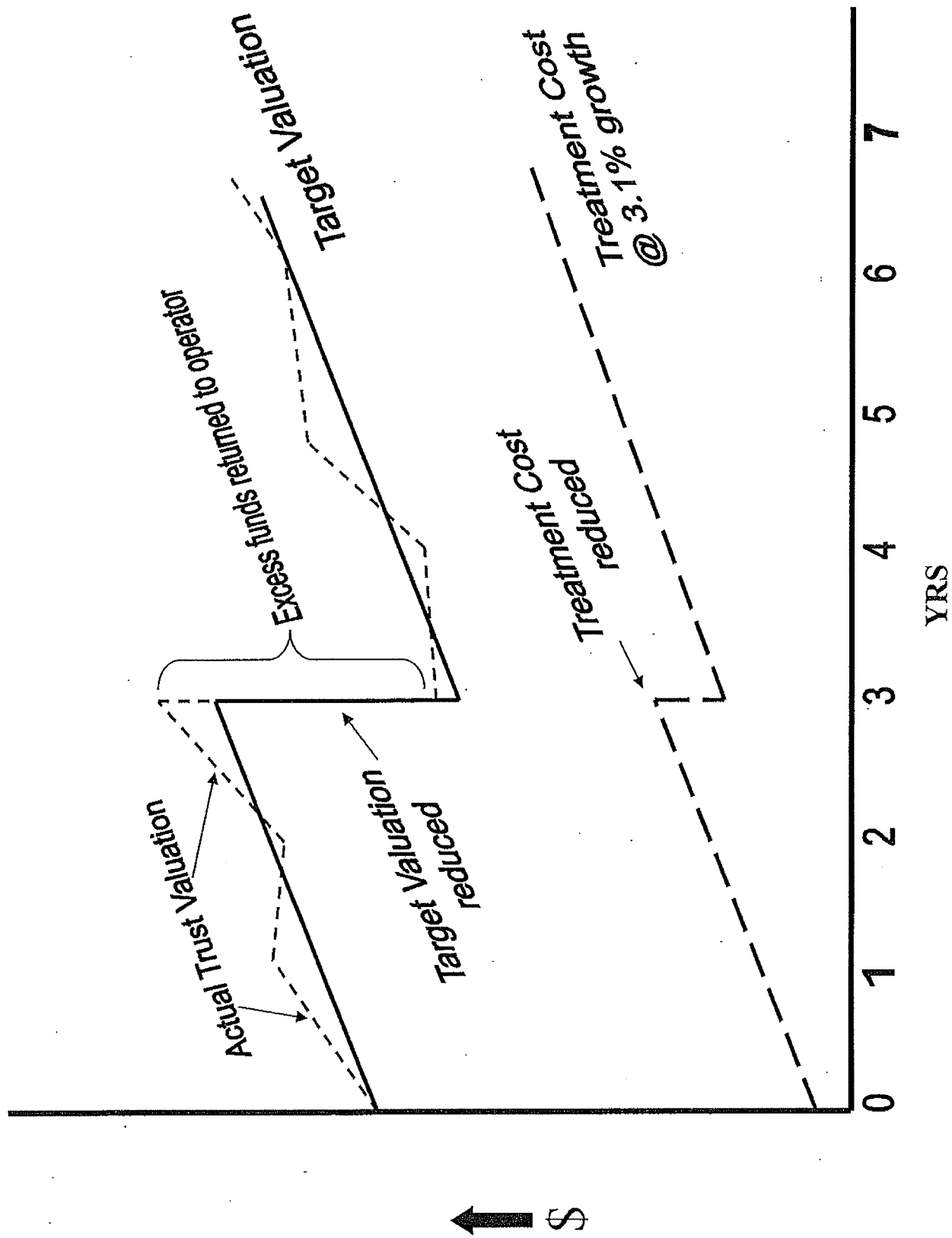


EXHIBIT L

TREATMENT TRUST AGREEMENT
EXHIBIT _____

BILL OF SALE AND LICENSE AGREEMENT

This Bill of Sale and License Agreement is entered into this _____ day of _____, 2017, by and between _____ with its principal place of business at _____ ("Transferor") and _____ with a business address of _____ as Trustee of the _____ Post-Mining Discharge Treatment Trust ("_____ Trust") ("Trustee").

Whereas, _____ has entered into a Postmining Treatment Trust Consent Order and Agreement ("COA") dated _____, _____ with the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department");

Whereas, _____ has entered into a Post-Mining Discharge Treatment Trust Agreement dated _____, 2017 with _____ which established the _____ Trust; and

Whereas, the Department requires Transferor to continue to treat the post-mining discharges covered by the COA, but also to immediately transfer the water treatment equipment and facilities to the Trustee to facilitate continued treatment of water and protection of the environment in the event _____ or its successors should cease treating the post-mining discharges.

KNOW ALL MEN BY THESE PRESENTS that Transferor in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, does hereby bargain, sell, transfer and convey to _____, as Trustee of the _____ Trust, all of its right, title and interest to the equipment, facilities, and other personal property (the "Personal Property") comprising the _____ Treatment Facilities, including, but not limited to, the equipment and other property described on Exhibit 1, attached hereto and made a part hereof, such transfer to be effective as of the date hereof (the "Effective Date").

Transferor represents and warrants that the Personal Property is transferred to Trustee hereby free and clear of all liens and encumbrances.

PROVIDED, HOWEVER, that _____ and its successors shall have a license to use, operate, maintain, construct or reconstruct the Personal Property to treat the post-mining discharges so long as _____, or its successor, is conducting the necessary water treatment operations. Pursuant to the exercise of the rights granted under this License, _____ shall at its sole cost and expense be responsible for maintaining and replacing/upgrading, as appropriate, the Personal Property.

Parts, additional equipment, replacements, and upgrades to the Personal Property and the treatment facilities and systems shall be done with the express written consent of the Trustee and the Department. As a condition of the License hereby granted, _____

TREATMENT TRUST AGREEMENT
EXHIBIT _____

agrees that all such parts, additional equipment, replacements, and upgrades shall immediately and automatically become the property of the _____ as Trustee of the _____ Trust. As long as this license is in effect and not terminated or revoked, _____, or its successor, shall bear all risk of loss of the Personal Property.

This Bill of Sale and License shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws provisions thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands effective the day and year first above written.

TRANSFEROR:

NAME:

(signature)

Witness:

By: _____

Its: _____

TRUSTEE:

NAME:

(signature)

Witness:

By: _____

Its: _____

TREATMENT TRUST AGREEMENT
EXHIBIT _____

Exhibit 1 to Bill of Sale and License Agreement
Transferred Personal Property

1.